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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master-in-Equity

Opinion No. 5549 (S.C. Ct. App. filed April 4, 2018)

Winrose Homeowners' Association, Inc. and Regime Solutions, LLC, ...Respondents,

v.

Devery A. Hale and Tina T. Hale, ...Petitioners.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Winrose Homeowners' Association, Inc. and Regime
Solutions LLC, Respondents,

v.

Devery A. Hale and Tina T. Hale, Appellants.

Appellate Case No. 2015-001807

Appeal From Richland County
Joseph M. Strickland, Master-in-Equity

Opinion No. 5549
Heard May 3, 2017 – Filed April 4, 2018

AFFIRMED

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Homeowners' Association, Inc.; Eric Christopher Hale,
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Respondent Regime Solutions, LLC.

THOMAS, J.: Appellants Devery A. Hale and Tina T. Hale filed this appeal following the denial of their motion to set aside a foreclosure sale. Appellants

claim the successful bid at the foreclosure sale shocked the conscience and violated equitable principles. We affirm.

FACTS/PROCEDURAL HISTORY

In February 2014, Respondent Winrose Homeowners' Association, Inc. (Winrose) filed a foreclosure action alleging Appellants failed to pay their association dues. In July 2014, the master filed a judgment of foreclosure ordering the property sold to satisfy the debt. The judgment of foreclosure stated the sale "shall be subject to . . . senior encumbrances" and specifically subject to a senior mortgage but did not disclose the outstanding balance of the mortgage. Regime Solutions, LLC (Regime) was the successful bidder at the foreclosure sale, which took place in August 2014. Regime's successful bid was for \$3,036.

In November 2014, Appellants filed a motion to vacate the foreclosure sale. Appellants claimed the property's fair market value as of October 31, 2014, was \$128,000 and the mortgage balance for the property was \$66,004. During the hearing on Appellants' motion to vacate, Appellants claimed the master should compare Regime's successful bid of \$3,036 to the amount of equity Appellants had in the property, which they calculated to be \$61,996. Comparing the successful bid to their equity, Appellants concluded the bid was for less than 10% of the fair market value and, thus, shocked the conscience. Appellants also asserted the master had "the ability in [his] gavel to do equity where perhaps equity should be done." Appellants went on to contend they were "hard working people" and "deserve[d]" the property. Appellants failed, however, to argue any irregularities with the foreclosure sale process. They failed to participate in any of the proceedings until filing the motion to set aside the sale despite admittedly receiving notices of the proceedings. They simply "put the papers in a drawer and forgot about them."

In response, Respondents argued the outstanding mortgage balance must be added to the successful bid to calculate an effective bid price for consideration under the "shocks-the-conscience" standard. Regime concurred with Appellants' assertion the property's fair market value was \$128,000. The master issued his ruling in April 2015. The master noted Regime purchased the property subject to the mortgage balance of \$66,004. The master agreed with Respondents that the appropriate calculation was to combine the successful bid amount with the mortgage balance to create an "effective sale price." Under this calculation, the master concluded Regime effectively bid \$69,040 for the property, which

constituted 54% of the fair market value. The master determined a bid of 54% of the fair market value did not shock the conscience, and he denied Appellants' motion to vacate the foreclosure sale. The master further explained "the practice of homeowners' association foreclosures would effectively be eradicated if [Appellants]' position came to bear." This appeal followed.

ISSUES ON APPEAL

1. Whether the master erred by denying Appellants' motion to vacate the foreclosure sale because the successful bid shocked the conscience.
2. Whether the master erred by denying Appellants' motion to vacate the foreclosure sale because equitable circumstances of the foreclosure demanded the sale be vacated.

STANDARD OF REVIEW

A foreclosure action is an equitable action. *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014). Thus, our standard of review is de novo. *Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017); see S.C. Const. art. V, § 5 (stating in equity cases, the supreme court "shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside"). Under de novo review, we may consider two principles long recognized by our courts "(1) a trial [court] is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial [court]." *Stoney*, 421 S.C. at 530, 809 S.E.2d at 59. De novo review allows us to take our own view of the evidence and make our own findings of fact. *Id.*

WHETHER THE SALE SHOCKED THE CONSCIENCE

Appellants argue the master erred by employing an improper calculation when deciding whether Regime's successful bid shocked the conscience. Appellants advocate for the Equity Method, which involves comparing the successful bid to the amount of equity in the property. The Equity Method consists of subtracting the amount of the senior encumbrance from the property's fair market value. The resulting number is the amount of equity in the property. The equity is then compared to the successful bid. According to Appellants, the successful bid must

be greater than 10% of the equity or South Carolina courts should set aside the judicial sale because such a sale would shock the conscience. In this case, under the Equity Method, the successful bid was 4.89% of the equity. Appellants claim the Equity Method is proper because, although the property remained subject to the mortgage, Regime was not required to personally assume the mortgage.

Respondents argue the master correctly analyzed whether Regime's successful bid shocked the conscience because senior mortgages must be included with the bid. Respondents note Regime must satisfy the mortgage in full to obtain clear title to the property. Finally, Respondents assert following Appellants' method of comparing the successful bid to the equity would create a chilling effect at foreclosure sales. Respondents claim potential bidders would be unable to determine the amount of equity in a property because there "are a host of statutes prohibiting" disclosure of a mortgagee's balance information. Respondents argue the Debt Method, which the master applied, is the proper method. The Debt Method consists of combining the amount of the successful bid with the amount of the senior encumbrance, which creates an effective bid price. The effective bid price is then compared to the fair market value. Respondents claim as long as the effective bid price is greater than 10% of the fair market value our courts should uphold the judicial sale. In this case, under the Debt Method, the effective bid price was 53.94% of the fair market value. We agree with Respondents that the Debt Method is the proper method for considering a senior encumbrance.

This Court will not set aside a judicial sale "except for cogent reasons." *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 355, 644 S.E.2d 802, 805 (Ct. App. 2007). Our policy is to uphold judicial sales "when regularly made, and when it can be done without violating principle or doing injustice." *Id.* We "zealously insure judicial sales be openly and freely conducted and nothing be allowed to chill the bidding." *Id.* at 355, 644 S.E.2d at 805–06.

When "unfair means have not been employed to prevent competition at a judicial sale, mere inadequacy of price is no ground for setting the sale aside." *Id.* at 356, 644 S.E.2d at 806 (brackets removed). However, our courts have set aside judicial sales under certain circumstances. "A judicial sale will be set aside when either: (1) the sale price 'is so gross as to shock the conscience[;]' or (2) the sale 'is accompanied by other circumstances warranting the interference of the court.'" *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 70, 762 S.E.2d 729, 733 (Ct. App. 2014) (quoting *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008)).

Determining whether a judicial sale shocks the conscience involves comparing the successful bid during the sale to the property's fair market value at the time of the foreclosure sale. *Id.* at 70, 762 S.E.2d at 734. Our courts have "not established a bright line rule for what percentage the sale value must be with respect to the [fair market] value in order to shock the conscience of the court." *Id.* "However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's [fair market] value, have our courts consistently held the discrepancy to shock the conscience of the court." *Id.* (quoting *Sanders*, 373 S.C. at 359, 644 S.E.2d at 807).

We found no South Carolina case, and the parties point to none, expressly weighing the Equity and Debt Methods and declaring the preferred method when accounting for a senior encumbrance. However, in *Arrow Bonding*, our supreme court considered whether to set aside a judicial sale based on the shock the conscience standard when a senior encumbrance remained on the property. *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 606–08, 732 S.E.2d 622, 623–24 (2012).¹ The successful bid during the judicial sale was \$2,500, and the property had senior encumbrances totaling \$100,000. *Id.* at 605–06, 732 S.E.2d at 623–24. The master utilized the Debt Method and determined the effective bid price was \$102,500. *Id.* at 606, 732 S.E.2d at 624. The master then determined the effective bid price constituted 39% of the fair market value and upheld the judicial sale. *Id.* Our supreme court explained the distinction between a judicial sale to foreclose a mortgage, which leaves the property unencumbered, and a different type of judicial sale, which may leave the property still encumbered after the sale. *Id.* at 607, 732 S.E.2d at 624. The court noted the master "properly considered the amount of the [senior encumbrances] in determining the true value of the properties to the buyer" at a judicial sale. *Id.* However, the court expressly noted the parties had not questioned the propriety of using the Debt Method calculation. *Id.* at 606 n.5, 732 S.E.2d at 624 n.5. The court ultimately found the appellant failed to meet his burden of showing the master erred because he failed to provide sufficient evidence of the property's true fair market value. *Id.* at 607–08, 732 S.E.2d at 624.

¹ The primary opinion in *Arrow Bonding* was a plurality opinion with two justices concurring, one justice concurring in result only, and two justices dissenting. 399 S.C. at 609, 732 S.E.2d at 625. The dissent was based not on the Debt or Equity Method but on an unrelated point of law. *Id.* at 609–10, 732 S.E.2d at 625.

The take away from *Arrow Bonding*, as it relates to this case, is that we should consider the senior mortgage on this property when determining whether Regime's bid shocked the conscience. However, *Arrow Bonding* does not conclusively establish whether the Debt or Equity Method is the law in South Carolina. *Id.* at 606 n.5, 732 S.E.2d at 624 n.5.

Prior to *Arrow Bonding*, this Court considered a similar factual situation. In *Brooks*, the holder of a second mortgage foreclosed on a property, and the successful bid during the judicial sale was \$875. *Fed. Nat'l Mortgage Ass'n v. Brooks*, 304 S.C. 506, 508, 405 S.E.2d 604, 605 (Ct. App. 1991) (per curiam). The property remained subject to a senior mortgage with a balance of \$24,720, and the special referee found the property's fair market value was \$52,500. *Id.* at 508, 509 n.1, 405 S.E.2d at 605, 606 n.1. On appeal, the successful bidder argued for application of the Debt Method. *Id.* at 509, 405 S.E.2d at 605–06. However, without any discussion regarding the competing methods, this Court appeared to utilize the Equity Method and declared, "It cannot be gainsaid that the payment by [the successful bidder] of \$875 for equity of over \$27,000 was adequate, albeit, it [was] not so grossly inadequate as to shock the conscience of the court." *Id.* at 510, 405 S.E.2d at 606. Thus, the *Brooks* court appears to have applied the Equity Method for deciding whether the successful bid shocked the conscience. We also note the *Brooks* court found the successful bid of \$875 for equity of over \$27,000 did not shock the conscience even though the bid represented only 3.15% of the equity. *Id.* The *Brooks* court went on to invalidate the judicial sale based on other circumstances surrounding the sale. *Id.* at 511–12, 405 S.E.2d at 607.

In this case, we find the Debt Method is the more reasonable method for determining whether a successful bid shocks the conscience because the successful bidder is required to satisfy the senior encumbrance dollar for dollar prior to obtaining clear title to the property. Also, it is reasonable to assume any bidder at a foreclosure sale is aware of the existence of a senior encumbrance and adjusts their bid accordingly. *See Cypress on Sunland Homeowners Ass'n v. Orlandini*, 257 P.3d 1168, 1181 n.8 (Ariz. Ct. App. 2011) (explaining the purchaser at a junior lien foreclosure sale must satisfy the senior lien to avoid foreclosure by the senior lienholder and "[t]herefore, the land becomes the primary fund for the senior debt, and the purchaser is presumed to have deducted the amount of the senior liens from the amount he bids for the land"). Because the successful bidder must satisfy the senior encumbrance dollar for dollar in order to obtain clear title, it is reasonable to give the successful bidder credit for satisfying the senior encumbrance as if satisfaction of the encumbrance were a part of the bid.

Further, application of the Debt Method is consistent with our general policy of upholding properly conducted judicial sales because the Debt Method will result in fewer set asides. *See Sanders*, 373 S.C. at 355, 644 S.E.2d at 805 (noting our general policy of upholding judicial sales when there are no irregularities with the sale process). Moreover, to the extent Appellants argue the Equity Method is preferable because Regime is obtaining equity without having to assume personal liability for the senior encumbrance, we disagree. Regime cannot truly access the equity in the property without satisfying the senior encumbrance because any future sale of the property would be subject to the senior encumbrance. Moreover, there is no evidence in the record to dispute or contradict Regime's assertion to the master that it would satisfy the senior encumbrance once the foreclosure sale was finalized. Accordingly, we find the Debt Method is the proper method for taking into account a senior encumbrance when deciding whether a successful bid shocks the conscience.² Thus, we affirm the master's application of the Debt Method.

Additionally, we agree with the master that Regime's bid did not shock the conscience under the Debt Method analysis. Combining the successful bid of \$3,036 with the senior mortgage balance of \$66,004 rendered an effective bid of \$69,040. Comparing the effective bid with the fair market value of \$128,000, the master correctly concluded the effective bid was approximately 54% of the property's fair market value. We believe the master properly determined an effective bid constituting 54% of the fair market value did not shock the conscience.

Next, we address a concern from the dissent. The dissent suggests applying the Debt Method could lead judicial sale buyers to purchase properties and rent them for income without ever satisfying the senior encumbrance. First, we believe this is a solution in search of a problem because Appellants presented no evidence or arguments to the master to suggest Regime, or any other entity, was engaging in this kind of scheme. Thus, it is unclear whether the dissent's concern has ever materialized. Second, we question whether such a scheme would be profitable considering the timelines involved with purchasing a property at a judicial sale, evicting the prior owner, and finding a tenant versus the senior mortgage holder foreclosing the property and cutting off the flow of rental income. However, we

² We are not bound by *Brooks*'s application of the Equity Method because the issue of the competing methods was not before the *Brooks* court and, as noted by the dissent, was dicta.

acknowledge this is largely speculation because Appellants presented no evidence or arguments to the master regarding this hypothesis. Third, this concern is overestimated because the circumstances surrounding this type of sale are rare. Appellants willingly failed to participate in any proceedings until filing this motion to set aside the sale despite receiving notices of the proceedings and having the financial ability to timely satisfy the association dues or bid at the sale. See *Eldridge v. Eldridge*, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012) ("Equity aids the vigilant, not those who slumber on their rights."). We believe it is rare for a homeowner to forego satisfying a "de minimis" junior encumbrance for several years, despite having the ability to pay, while continuing to pay the monthly mortgage payment. Finally, with regard to the idea that the law should redress the alleged injustice that may result from judicial sale buyers employing this rental scheme, we believe the legislature is better suited to address the concern.³

Finally, to the extent Appellants argue the master should have set aside the sale because other circumstances warranted the court's interference, the argument is unpreserved. See *Bloody Point*, 410 S.C. at 70, 762 S.E.2d at 733 (noting the court may set aside a judicial sale if the sale "is accompanied by other circumstances warranting the interference of the court"). The master's order included a ruling only on whether to apply the Debt or Equity Method and whether the resulting percentage shocked the conscience. The master never ruled on whether other circumstances warranted the court's interference, and Appellants did not file a Rule 59(e) motion to alter or amend. As a result, this argument is unpreserved. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have

³ Whether we apply the Debt or Equity Method under these circumstances, the underlying issue of judicial sales taking place to satisfy junior encumbrances while leaving the property burdened by senior encumbrances will continue. The legislature may wish to consider remedying this issue by treating judicial sales to satisfy junior encumbrances similarly to tax sales, which extinguish mortgages and other liens provided the lienholders receive notice prior to the sale. See *Fed. Fin. Co. v. Hartley*, 380 S.C. 65, 70, 668 S.E.2d 410, 413 (2008) (recognizing a tax sale extinguishes a mortgage on real property); S.C. Code Ann. § 12-49-1180(A) (2014) (explaining the rights of a mortgagee, as long as the mortgagee complies with certain conditions, "are not affected by a tax sale and a deed of conveyance, unless" the tax collector provides the mortgagee with notice pursuant to section 12-49-1120 of the South Carolina Code (2014)).

been raised to and ruled upon by the trial [court] to be preserved for appellate review."). Thus, we affirm the master's ruling that Regime's bid did not shock the conscience.

WHETHER EQUITY DEMANDED THE MASTER SET ASIDE THE SALE

Appellants argue the master erred by failing to weigh the equitable maxims and principles that were essential to ruling on their motion to vacate the foreclosure sale. Specifically, Appellants assert they made an equitable argument during the hearing but "there [was] no record of an equitable consideration by the [master] or mention of the principles that the court considered in the [o]rder." Appellants further claim "there is no evidence" the master considered their equitable argument.

We find Appellants' arguments regarding equitable maxims unpreserved because they did not properly raise them to the master and the master did not rule on them. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." *Id.* Appellants failed to properly raise their equitable arguments to the master. During the hearing, Appellants asserted the master had "the ability in [his] gavel to do equity where perhaps equity should be done." Appellants failed to state any specific equitable maxims during the hearing. Appellants merely contended they were "hard working people" and "deserve[d]" the property. Appellants' arguments during the hearing were insufficient to properly raise the equitable arguments they now raise on appeal.

Additionally, the master failed to rule on any equitable argument in his order. The order addressed only whether the master should set aside the sale due to Regime's bid shocking the conscience. The master did not rule on any equitable argument. Indeed, Appellants admit as much in their brief by arguing "there is no evidence" the master considered their equitable argument. Based on Appellants' failure to properly raise their equitable arguments and the master's failure to rule on them, we find Appellants' equitable arguments unpreserved.

CONCLUSION

Based on the foregoing, we affirm the master's ruling that the Debt Method is the proper method to account for a senior encumbrance and that Regime's bid did not shock the conscience. Finally, Appellants' equitable arguments are unpreserved.

AFFIRMED.

HUFF, J., concurs.

LOCKEMY, C.J., dissenting: I respectfully dissent. I agree with the majority that the mortgage should be taken into account when determining whether a bid at a judicial sale is so grossly inadequate it shocks the conscience. I would utilize the Equity Method as a better vehicle to determine whether a bid shocks the conscience.

As the majority concedes, this court has previously approved the use of the Equity Method to determine the adequacy of a successful bid during a judicial sale. *See Fed. Nat. Morg. Ass'n v. Brooks*, 304 S.C. 506, 510, 405 S.E.2d 604, 606 (Ct. App. 1991). While the majority correctly indicates the court in *Brooks* did not face the issue of which method to use to determine adequacy of the bid, the court based its analysis on the equity purchased at the foreclosure sale and the bid price for that equity. I believe the best course would be to continue to utilize this method, which seeks to encourage judicial sales while also being fair to property owners.

Furthermore, I believe this court's decision to analyze judicial sales utilizing the Equity Method is sound. A buyer at a judicial sale in which a senior lienholder is not a party takes the property subject to that lien, but the buyer is not responsible for its payment. The evidence in this case shows Appellants have continued to pay the mortgage for a home for which they have no title because they will suffer the severe consequences of default if they do not. The buyer has paid nothing. I do not believe it proper to give a judicial sale buyer credit for assuming a debt which it is not legally required to pay. *See Restatement (Third) of Property (Mortgages) § 8.3 cmt. b* (Am. Law Inst. 1997) ("Where the foreclosure is subject to senior liens, the amount of those liens must be subtracted from the unencumbered fair market value of the real estate in determining the fair market value of the title being transferred by the foreclosure sale."). Such a rule could create a perverse circumstance where a judicial sale bidder purchases a property for a *de minimis* amount simply to capitalize on rental revenue until the senior lienholder forecloses its mortgage. The majority asserts this concern is overestimated and the circumstances of this case are rare. Whether rare or the impetus to create a business of judicial buyers seeking a windfall profit, in my view, the result is unjust. The law should provide an avenue of redress for this injustice. Adopting the Equity Method at least opens up that avenue for consideration by the courts.

The majority reasons the Debt Method is consistent with this state's policy of upholding judicial sales because "the Debt Method will result in fewer set asides." I agree with the majority that fewer sales will be set aside—in fact, I suggest virtually no sales will be set aside under these circumstances. Buyers need only bid a minimal amount and if a property is encumbered by a mortgage of at least 10% of the home's value, the bid is not subject to attack for being grossly inadequate. Our supreme court has determined that judicial sales must produce bids that are not grossly inadequate. *See e.g., Arrow Bonding Co. v. Warren*, 399 S.C. 603, 607-08, 732 S.E.2d 622, 624 (2012). The Debt Method threatens to swallow this rule for the sake of upholding judicial sales.

Finally, using the Equity Method, and recognizing our de novo standard of review, I would find the price paid was so inadequate as to shock the conscience. *See Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017) (reiterating the de novo standard of review of decisions by courts sitting in equity). I recognize the *Brooks* court found the 3.15% paid for the property in that case was "not so grossly inadequate as to shock the conscience." *Brooks*, 304 S.C. at 510, 405 S.E.2d at 606. This dicta from *Brooks* must be considered with holdings from recent cases of this court which have routinely held when a property is sold at a judicial sale for less than 10% of a property's actual value, the sales price shocks the court's conscience.⁴ *See Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 70, 762 S.E.2d 729, 734 (Ct. App. 2014); *E. Savings Bank, FSB v. Sanders*, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007). I believe the judicial sale buyer's winning bid, which amounts to 4.89% of the property's value, is so grossly inadequate, the judicial sale should be set aside. Therefore, I respectfully dissent.

⁴ While I applaud the majority in its attempt to uphold judicial sales, I cannot agree that any bid on a property which will remain subject to a senior encumbrance will be deemed not grossly inadequate. Under the majority's analysis, a bid for \$1, combined with a mortgage of at least 3.24% of the value of the property would not be grossly inadequate. I simply cannot agree.

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APPEAL FROM RICHLAND COUNTY
Master in Equity

Hon. Joseph M. Strickland, Master-in-Equity

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PETITION FOR REHEARING

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs petitions for rehearing, while Rule 240 governs motions and petitions in general.

The Court issued its decision on April 4, 2018. See Op. No.5549. This petition is timely under Rule 221(a).

Appellants respectfully resubmit the arguments from its briefs, and wish to reserve such arguments for further review. In addition to those arguments, Appellants respectfully submit that the Court may have overlooked or misapprehended the following points in its April 4, 2018 decision:

*

Trial and appellate courts have not until this time, determined a method on calculating how a bid amount at a foreclosure sale may “shock the conscience” of the court. The cases, before the one at bar, have not always had information about the value of the property and the equity in the property. In *Bloody Point Property Owner Ass’n vs. Ashton*, 410 S.C. 62, 71, 762 S.E. 2d 729, 734 (Ct. App. 2014) the trial court was presented two appraisals. The court did not have an agreement between the parties as to value of the property. The court discussed that there was a question of fact about the value and made a determination of value through county records. The property, in the court’s opinion, was worth far less than appellants hoped. The court did not have to make a determination of which method (Debt or Equity) to use, because either method did not mathematically shock the conscience of the court.

Here, an appraisal and the mortgage balance was part of the record for the trial court. The parties agree that the value of the Hale’s property was \$128,000 and that the equity was over \$62,000. The only determination left for the court was to decide the basis for one of two methods to make a finding of how the Court’s conscience would be shocked by a bid at a foreclosure sale with senior lien holders still having mortgages on the property. As this Court points out, there has not been an express ruling in South Carolina on which is the preferred method. The two methods are the Debt Method and the Equity Method.

The opinion finds the Debt Method is the preferred method for determining whether a successful bid shocks the conscience because the successful bidder is required to “satisfy the senior encumbrance dollar for dollar to obtain clear title to the property,” Slip op. at 7 ¶ 1. Respectfully, the bidder is not *responsible* for the debt. The owner, the person who signed the

Note and Mortgage, is the only person responsible for the debt that is still on the property after the sale. When the owners are evicted from their home, they must still pay or be accountable to the bank that holds the Note. As the dissent comments, the “Appellants have continued to pay the mortgage for a home for which they have no title because they will suffer the severe consequences of default if they do not.” Slip op. at 10 ¶ 5.

Respondent’s counsel told the trial court, “my clients paid roughly 54 percent of the value of the property” (Record, Page 37, L. 2-3), but Respondent only *paid* in dollars, the bid amount. That amount paid was only 4.89% of the value. The rest of the amount is what *might have* to be paid if the property is sold at a later sale. The real amount paid was under half of what has been said is necessary to shock the conscience. The record also shows that the Appellants have continued to pay the mortgage for the home. The Respondent has paid nothing toward the payments since it bought the property over four years ago. As the dissent pointed out, the judicial sale buyer “takes the property subject to the lien, but the buyer is not responsible for its payment.” Slip op. at 10 ¶ 5. The fair, legal method to determine a threshold to shock the conscience is the Equity Method, which the dissent adopts.

At oral argument, the Court inquired of counsel for the Respondent if he knew how much debt was being paid by the Respondents on the properties it had purchased. Counsel answered that he didn’t know. Appellant’s counsel informed the Court that the Respondent had purchased forty-three properties in Richland County and that not one nickel had been paid in debt since the purchases. Most of the properties have slipped into foreclosure when the owners were ejected. This was not disputed by Respondent’s counsel. This demonstrates, empirically, what happens when a homeowner’s association lien is foreclosed. Mortgages go unpaid and another

foreclosure, filed by the mortgage holder, follows.

* *

The Respondents further argue that the Debt Method is the preferred method because, in part, to use the Equity Method would create a “chilling effect” on foreclosure sales. This is supported by the faulty position that potential bidders would be unable to determine the amount of equity at the sale because of a “host of statutes” prohibiting disclosure of mortgage balances and the equity would be hard to calculate. The calculations are not difficult. The Register of Deeds has the original amount of the mortgage(s) of record. The potential bidder can easily calculate the approximate balance without violating any privacy laws or statutes.

A bidder has a good idea of the time a loan has been paid by the owner and the value of the property by easy— and now more available—searches, on line. The harm to the homeowner who is still responsible for the debt on the home as a borrower should outweigh the benefit to a potential bidder who doesn’t know the precise amount of the debt balance any more than they know the equity amount. There would be no chilling effect on foreclosures because the information is not hidden or incapable of being determined. If the Debt Method is preferred over the Equity Method because the math is difficult, both methods employ the same amount of difficulty. Both the debt and the equity are calculable within reason. If the Equity Method is used, there is no chilling effect. As a practical matter, the only way either of these methods are invoked is when a homeowner files for a hearing on the valuation *after* the sale. The court does not have a duty to calculate anything until a party files a Motion to set aside the sale, or files a motion similar to a borrower invoking the right of appraisal when a deficiency judgment is sought in

a foreclosure. The court doesn't have to investigate or provide any math calculation until a party files for inquiry.

The argument that there would be a chilling effect on foreclosures of Home Owner's Association liens doesn't hold water.

* * *

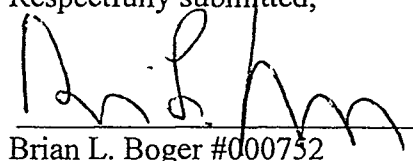
Respectfully, the equitable maxim argument, the Appellant believes, is preserved. Although there is no specific maxim used at the trial court, the argument was made that the "court had the ability in (his) gavel to do equity were perhaps equity should be done." The equitable maxim would be that "Equity will not suffer a wrong to be without a remedy." To dismiss that preservation is simply form over substance. The equitable argument should be preserved.

Conclusion

The Court should grant this petition and issue an opinion using the Equity Method and set aside the trial court's Order.

April 19, 2018

Respectfully submitted,



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The South Carolina Court of Appeals

Winrose Homeowners' Association, Inc. and Regime
Solutions LLC, Respondents,

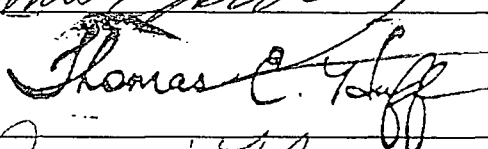
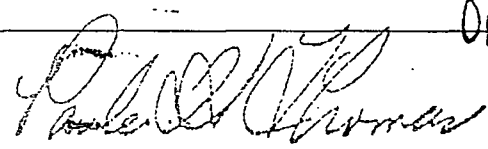
v.

Devery A. Hale and Tina T. Hale, Appellants.

Appellate Case No. 2015-001807

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Brian L. Boger, Esquire

Eric Christopher Hale, Esquire

Stephanie Carol Trotter, Esquire

FILED

June 1, 2018

Phillip Anthony Curiale, Esquire
The Honorable Joseph M. Strickland

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Hon. Joseph M. Strickland, Master-in-Equity

Case No. 2015-001807

RECEIVED

FEB 04 2016

SC Court of Appeals

Winrose Homeowners' Association, Inc. and Regime Solutions, LLC..... Respondents,

v.

Devery A. Hale and Tina T. Hale..... Appellants.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. **WHETHER THE LOWER COURT ERRED IN DENYING THE MOTION TO VACATE SALE BECAUSE THE SALE PRICE SHOCKS THE CONSCIENCE.**
- II. **WHETHER THE LOWER COURT ERRED IN DENYING THE MOTION TO VACATE SALE BECAUSE CIRCUMSTANCES OF THIS HOMEOWNER'S ASSOCIATION FORECLOSURE DEMAND THAT THE SALE BE VACATED IN EQUITY.**

STATEMENT OF THE CASE

This is an appeal from an Order Denying Defendants' Motion to Vacate Sale of a homeowner's association (HOA) foreclosure of lien. Appellants Devery and Tina Hale are the original owners and residents of the real property at issue. On February 24, 2014, Respondent Winrose Homeowner's Association, Inc. (Winrose) filed a Complaint for foreclosure of a Homeowner's Association lien on the Appellants' residence. The property was purchased by Respondent Regime Solutions, LLC (Regime Solutions) at public sale on August 4, 2014 for \$3,036.00. The Hales filed a Motion to Vacate the Sale for the inadequacy of the successful bid. The Motion was heard on February 6, 2015 by the Honorable Joseph M. Strickland, Master in Equity for Richland County. On April 21, 2015, Judge Strickland filed an Order Denying the Motion to Vacate Sale. Appellants filed a timely Notice of Appeal on August 21, 2015.

FACTS

Appellants Devery and Tina Hale have lived in their home located at 25 Caddis Creek Court, Irmo, South Carolina, since they executed the original note and mortgage in 1998. (R. pp. 16, ¶ 3, 29). In 2011, Appellants got behind on their HOA dues. (R. p. 16, ¶ 7). Respondent Winrose Homeowners' Association, Inc. filed an action for foreclosure of the

HOA lien. (R. pp. 16-17). The property was sold at public sale, and the successful bid by Respondent Regime Solutions, LLC was for \$3,036.00. (R. pp. 25, 72, lines 15-16, 6, lines 23-25). Appellants offered Respondent Regime Solutions, LLC, \$9,000 to repurchase the property, but their offer was not accepted. (R. p. 74, lines 4-6, lines 11-12). Appellants filed a Motion to Vacate Sale on November 4, 2014. (R. pp. 29-47). The Motion was denied, and this appeal follows. (R. pp. 12-15).

STANDARD OF REVIEW

“A mortgage foreclosure is an action in equity.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 248, 715 S.E.2d 348, 352 (Ct. App. 2011). The South Carolina Court of Appeals “review[s] factual findings and legal conclusions in an equitable action de novo.” *Id.* In addition, the interpretation of an order is a question of law subject to de novo review. *See Ex parte TLC Laser Eye Ctrs. (Piedmont/Atlanta), LLC*, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013). “An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions.” *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

ARGUMENT

A man’s house is his castle. A common phrase in modern literary works, the sentiment can be traced back to Roman times. The English phrase was coined in the 1600s by English barristers and commentators of law to mean that real property is, by maxim, sacredly tied to the landowner. *See* Robert J. Alberts, *Drug Testing Tenants: Does It Violate Rights of Privacy?* 38 Real Prop. Prob. & Tr. J. 479, 486 (2003). According to many

commentators, a violation of a man's home is akin to an assault on the body of the man himself. *Id.* The saying and the purpose of that saying "is still alive and taken seriously as a legal and moral exemplar." *Id.* The Hales have had their rights in their property violated, and this violation goes to the heart of their pride in being a homeowner. They are not asking to be relieved of their responsibility to pay HOA fees. They are asking that the HOA conduct their debt collection in a way that does not violate some of these Appellants' most important and meaningful rights.

The successful bid in the instant case both "shocks the conscience" of the court, and may also be set aside by the power of this court to decide that there are accompanying circumstances warranting the vacation of this sale. According to the *Poole* test, "[a] judicial sale will be set aside when either: (1) the sale price is so gross as to shock the conscience; or (2) the sale is accompanied by other circumstances warranting the interference of the court." *Wells Fargo Bank, N.A. v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 425 (Ct. App. 2008) (citing *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1943)); see also *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 542, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) ("[A] foreclosure sale might also be set aside under State foreclosure law if the price is so low as to 'shock the conscience or raise a presumption of fraud or unfairness.'"). Courts in South Carolina have been setting aside judicial sales based on "grossly inadequate" sales prices. *Turner*, 378 S.C. at 151, 662 S.E.2d at 425. South Carolina courts "have consistently held that when foreclosure sale prices amount to less than ten percent of the actual value of the property, the discrepancy shocks the conscience of the court." *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 71, 762 S.E.2d 729, 734 (Ct. App. 2014). However, it is evident that the court has not had the intention of

creating black letter law as to the equation to be used or the percentage that would decidedly “shock the conscience” of the court. *See E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007) (stating “South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court.”).

The South Carolina cases that apply to the instant situation have not specifically considered which equation should be used when deciding whether the amount of the bid shocks the conscience. In addition, none of these cases set out to determine what to do with senior liens in an HOA foreclosure and sale. In fact, Appellants argue that the courts have not clearly dictated what standard to apply in this situation. Appellants ask that the Court in this case: 1) divide the sale’s price by the equity in the property to properly determine whether the successful bid at the sale shocks the conscience of the court, and 2) consider the circumstances of an HOA foreclosure and sale to be different than court-mandated sales of other types.

I. THE LOWER COURT ERRED IN REFUSING TO VACATE THE SALE WHEN IT USED AN IMPROPER CALCULATION TO DECIDE WHETHER THE BID SHOCKED THE CONSCIENCE OF THE COURT.

In each of the cases cited as precedent, it is evident that the court did not have the intention of creating precedent for the exact equation to be used or the exact percentage that would decidedly “shock the conscience” of the court. *See generally, Bloody Point Prop. Owners Ass’n, Inc.*, 410 S.C. 62, 762 S.E.2d 729; *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012); *Wells Fargo Bank, NA.*, 378 S.C. 147, 662 S.E.2d 424; *Investors Sav. Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990). However, a search of South Carolina jurisprudence reveals only when judicial sales are at least less

than ten percent of a property's actual value, our courts consistently held the discrepancy to shock conscience of the court." *Bloody Point Prop. Owners Ass'n, Inc.*, 410 S.C. 62, 71, 762 S.E.2d 729, 734.

- a. **South Carolina law is silent as to which calculation should be used to decide whether the percentage of the bid in this case shocks the conscience of the court.**

The case law in South Carolina is silent as to the exact way to render the bid inadequate under the circumstances at hand, and the bid should be considered inadequate as to shock the conscience in this case.

The court in *Phelps* was primarily concerned with what the current fair market value (FMV) of the property should be because the defendants did not provide the court with a current appraisal. *See* 303 S.C. 15, 397 S.E.2d 780. The court affirmed that the sales price of \$510 shocked the conscience because it was less than 1% the original note and mortgage (\$48,340). *Id.* This court also distantly noted the amount of equity in making its decision when it considered that "[e]ven if the property was worth only a fourth of the amount loaned on it four and on-half years earlier, [the] bid would be only 4.2% of its value." *Id.* at 19, 397 S.E.2d 782.

The *Phelps* calculation is not precedent for the calculation in the instant case because it is unclear. The calculation that returned 4.2% is not stated and is likely different than the calculation used to determine that the bid was 1% of the value. *See id.* The court found that the 4.2% bid shocked the conscience of the court, although their calculation is not in the opinion. While Appellants agree with the Court in *Phelps*, the way that the court reached that mathematical conclusion is not clear.

In *Turner*, the court was again pressed with the primary question of deciding FMV, but the issue at hand was whether the note and mortgage presented at the initial hearing was sufficient notice to the purchaser of the value of the property. *See* 378 S.C. 147, 662 S.E.2d 424. The court decided that the sale should have been vacated because the bid was inadequate using the following calculation: Bid (\$3,000) divided by the original note and mortgage (\$86,025) equals 3.65%. *See id.*

In *Arrow Bonding Co.*, the court did not adopt the appellants' request to ignore the senior liens when considering whether the bid shocked the conscience. *See* 399 S.C. 603, 732 S.E.2d 622 (2012). However, the reason that the Supreme Court of South Carolina affirmed the Master's decision to allow a bid amount of \$2,500 was because "the record is devoid of evidence of the true value of the property," and as such the appellants did not meet their burden to reverse the Master's decision. *Id.* The facts in *Arrow Bonding* are distinct from the facts in the instant case because the appellants in *Arrow Bonding* did not provide sufficient evidence of the encumbrances on the property. *Id.* The appellants in *Arrow Bonding* also neglected to argue that the court consider the equity in the property. *Id.* This is not the case here, because the Hales brought sufficient evidence of the senior liens on the property, have acquired an accurate and recent appraisal to determine the fair market value of the house, and requested that the below-mentioned calculation be applied in their case. (R. pp. 15, 33-46) In addition, the court in *Arrow Bonding* does not do the calculation for itself, citing only that *Phelps* used a percentage of 1.5%¹ and that the Master concluded that the bid amount was 39% of the assessed value. *Id.* at 607, 732 S.E.2d 624.

¹ This is unclear because the court in *Phelps* found that the bid was 1% or 4.2%, but did not have a finding of 1.5%.

For these reasons, the court should not attempt to adopt the procedure used in *Arrow Bonding* to decide whether the bid is inadequate in this case.

The main issue regarding the inadequacy of the bid in *Bloody Point* was which appraisal presented by the parties should be used for the property's actual value. *See* 410 S.C. 62, 762 S.E.2d 729. This is distinct from the issues in the instant case because the value of the property is evidenced by the Appellants' appraisal and has not been disputed.

It should also be noted that *Bloody Point* is the most recent South Carolina case, and it does not apply any specific calculation, stating only that "the Property would have to be worth more than \$115,930 for the foreclosure sales price to be less than 10% of the actual value." 410 S.C. 62, 70-71, 762 S.E.2d 729, 734. The court's unwillingness to state exactly what the Master should have done signifies that there is no precedent for this calculation. For the reasons stated above, *Bloody Point*, and the cases on point that precede it, invite the court in the instant case to use the equity in the property to more accurately consider whether the bid "shocks the conscience" of the court.

b. The calculation in this case should not include the senior mortgage.

Neither *Phelps* nor *Turner* considered senior mortgages in deciding whether the bid amount shocked the conscience of the court. *See* 303 S.C. 15, 397 S.E.2d 780; 378 S.C. 147, 662 S.E.2d 424. In the most recent South Carolina case, *Bloody Point*, the court did not consider the senior liens on the property when it decided that the sale price did not "shock the conscience." *See* 410 S.C. 62, 762 S.E.2d 729. Importantly, *Bloody Point*, like the instant case, is an HOA foreclosure, whereas the other cases are not. *Id.* The nature of an HOA lien is that of a second lien to the mortgage, but the court did not consider senior

liens in its calculation. The court in *Bloody Point* decided that the bid (\$11,593) should be multiplied by 10, and then would only shock the conscience if there was evidence in the record of an accurate appraisal greater than \$115,932. *Id.* Because *Bloody Point* is the most recent case, the calculation should be applied as closely as can be drawn from that case.

Additionally, at the time that the Master in this case denied the Motion to Vacate the Sale, it added the encumbrances to the amount that Regime Solutions “pays” for the property. To have considered the amount already paid is an error of fact. The bidder in a HOA foreclosure action is required to take the property subject to the senior mortgages. However, it is not required to *assume* those mortgages. It was an error for the Master to include the senior mortgage in its calculation because the bidder is not personally liable, the evicted defendants are the ones personally liable.

Applying the *Bloody Point* calculation, the successful bid by Regime Solutions in this case (\$3,036) multiplied by 10 is \$30,360. This is much less than the appraisal amount of \$128,000 presented by the Appellants. Without evidence that the property is worth less than \$30,360 the decision by the Master to deny the Motion to Vacate Sale should be reversed. Stated another way, the bid amount (\$3,036) divided by the appraisal amount (\$128,000) renders the bid in this case 2.3% of the value. Therefore, the Master committed an error of law when it applied the senior mortgages to the bid amount and decided the sale price did not shock the conscience.

c. In the alternative, the calculation should use the equity in the home to determine whether the bid shocks the conscience of the court.

Because there is no precedent in South Carolina as to how the percentage should be determined to decide whether the bid shocks the conscience of the court, the court in

this case should adopt the calculation used by United States Bankruptcy Court of the Southern District of New York. See *In re 824 South East Boulevard, Inc. (In re 824)*, No. 12-01028, 2012 WL 3561981 (S.D.N.Y. Aug. 17, 2012). Like South Carolina law, *In re 824* notes that “sales below 10% of the FMV are unconscionable, while sales at or above 50% of fair market value have been consistently upheld.” *Id.* The court examined whether it should void the foreclosure in light of evidence that the senior liens on the property were \$3,000,000¹ and the property value was \$5,510,000. *Id.* The court determined that the successful bidder “may have purchased the Premises with equity of approximately \$2,510,000 for only \$116,910.32. . . . Assuming this figure is accurate, it would represent a sale price of about 4.7% of the value of the Premises after subtraction of the two senior mortgages.” *Id.* The court in *In re 824* properly concluded that the sale price was unconscionable because the value (\$5,510,000) minus the encumbrances (\$3,000,000) left equity of (\$2,510,000), and the successful bid (\$116,910.32) divided by the equity (\$2,510,000) was a mere 4.7% of the value. *Id.* This is a reasonable way to decide whether the sale price shocks the conscience when there are senior liens to consider, especially in cases when an HOA lien will usually be subject to a senior mortgage.

The equation from *In re 824* should be used in this case, and in all HOA foreclosures, to determine whether a sale bid shocks the conscience. This calculation begins by finding the equity in the property. This is because, even when applying the senior liens, the successful bidder will acquire the equity that is already in the property from the

¹ There were possible judgment liens in addition to the \$3,000,000 in mortgage liens that the court also considered. It noted that if those liens were included, the Premises was subject to encumbrances in excess of its value. However, if those liens were found to be junior, then the above calculation rendered the bid unconscionable, as it is well below 10 percent.

foreclosure sale. This can be found by adding the bid amount to the senior liens, and then subtracting that from a recent appraisal that reflects the fair market value. This results in the amount of equity that will be acquired by the purchaser for free. In other words, the equity in the property at the time of sale is what the successful bidder acquires, and therefore should be the most important amount in considering whether the bid shocks the conscience. Appellants argue that the bid amount should thereafter be divided by the equity that the purchaser has acquired “for free.” This percentage should be considered for whether the sale price should be vacated for inadequacy.

In the instant case, the following calculation would result: Regime Solution’s successful bid amount (\$3,036) added to the amount of senior mortgages on the property (\$66,000), subtracted from the appraisal or FMV of the property (\$128,000). Regime Solutions essentially purchased \$59,000 in equity for \$3,036. Their bid of \$3,036 divided by \$59,000 of equity renders the successful bid in this case 5%, which is well below the 10 percent that has consistently shocked the conscience of the court.

d. The HOA should be responsible for conducting a brief investigation into the equity on each of its foreclosed properties.

On a separate issue in *Arrow Bonding*, the court discusses that it is not the Master’s responsibility to conduct a title search, discover liens, determine the true value of property, and subsequently devise an appropriate sale price. 399 S.C. 603, 732 S.E.2d 622. Appellants in this case run into a similar issue: who is responsible for conducting an investigation into the equity of the property in an HOA foreclosure sale? For the court to properly institute the above-proposed calculation, it must dictate that the HOA is responsible for the calculation in cases of HOA foreclosures.

The HOA is in the best position to determine a sale price that does not shock the conscience, and it has an interest in the sale not being vacated. HOA foreclosures are an epidemic that cannot be dealt with using the current black letter law, and require additional safeguards to make sure that the circumstances will not warrant interference. The HOA is in the best position to determine if the sale will be overturned because it has access to the amount of its lien, and to the public record accounting for all senior liens. It also has access to the tax records or the amount of the original note and mortgage to determine the FMV of the property. Appellants believe this is the only way to satisfy concerns of fairness and ensure that HOA foreclosures in South Carolina do not remain the problem that they are in this case.

II. THE CIRCUMSTANCES OF THIS HOA FORECLOSURE DEMAND THAT THE SALE BE VACATED IN EQUITY.

When the lower court did not weigh the equitable maxims and principles that are essential in ruling on the Motion to Vacate Sale, it abused its discretion. “A mortgage foreclosure is an action in equity.” *Regions Bank*, 394 S.C. 241, 248, 715 S.E.2d 348, 352. “Equitable principles are not binding legal precedent but represent notions and concepts of equity in various situations.” *Id.* “The judicial process is the continuous effort on the part of the courts to state accurately these general rules, with their proper and necessary limitations and exceptions.” *Id.* That said, in actions for equity, the courts have “the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.” *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).

This case involves the consideration and balancing of several equitable maxims: equity will not suffer a wrong to be without a remedy; equity disfavors forfeitures; equity regards substance rather than form; equity looks to the intent rather than the form; and one who seeks equity must do equity. Case law in South Carolina also states that “there is no inconsistency in . . . pursuing two remedies. If one produces satisfaction that is a bar to the other.” *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 36, 647 S.E.2d 214, 217-18 (2007). The lower court did not properly consider and weigh these principles in equity, and therefore its decision should be reversed.

a. The lower court erred in denying the Motion to Vacate the Sale because the sale violates principles of equity.

i. The court must weigh circumstances when considering the equitable maxims that equity will not suffer a wrong without a remedy and equity disfavors forfeitures.

The lower court denied the Hales’ Motion to Vacate because it did not weigh the equity argument in its findings. Although counsel for the Hales made an equitable argument at the hearing, there is no record of an equitable consideration by the court, or mention of the principles that the court considered in the Order. (R. p. 81, lines 8-10, line 25-p. 82 line 1; R. pp. 12-14).

In deciding whether the sale should be set aside, courts are confronted with the principles that equity will not suffer a wrong to be without a remedy and that equity disfavors forfeitures. *See Regions Bank*, 394 S.C. 241, 715 S.E.2d 348. The most important factor in balancing the equities in this matter is which party suffered a loss under the Master’s decision without an available remedy.

If the sale is allowed, the Hales will be evicted from the home they have lived in for 17 years. They will no longer be property owners, forfeiting their “castle,” and violating one of the most important age-old bond – the bond between citizens and their real property. In addition, they will lose \$59,000 of the equity that they have worked hard to put into the home. The Hales will also lose any value of improvements that they have made to the property. The HOA will retain the amount that satisfied their lien. Regime Solutions will be enriched by the \$59,000 of equity that it purchased for \$3,036.

On the other hand, if the Master’s decision is overruled, the Hales will be made to pay the amount due on the HOA lien that they owe. At that time, the HOA will be satisfied. Regime Solutions will be returned the money that it paid to satisfy the judgment, and they will suffer no loss.

The HOA suffers no loss if the sale is vacated, and no harm if the sale is upheld. If the sale is allowed, Regime Solutions’s windfall and the Hale’s forfeiture will frustrate the principles of equity, which disfavors forfeiture.

In addition, it is important to consider that the decision to uphold the Master’s Order will render the Hales without a remedy for a grave wrong. As stated above, the Hales will have forfeited \$59,000 without any available way to reclaim that amount of money. Also, the Hales are the only party that is personally liable for the existing senior mortgages on the property, and they may still have to pay \$66,000 in senior mortgages. If the sale is allowed, the Hales stand to lose \$125,000 as well as their home, and will have no remedy at law with which to correct the issue. This is a violation of equitable maxim that equity will not suffer a wrong without a remedy. Therefore, the denial of the Motion to Vacate Sale should be reversed because it violates the principle of equity.

ii. The court must weigh circumstances when considering the equitable maxims that one who seeks equity must do equity.

The Hales are requesting that the Master's decision to deny the Motion to Vacate the Sale be reversed in equity. In good faith, the Hales offered to negotiate with Regime Solutions to buy their house back. Regime Solutions has not acted in equity because it refused Appellants' offer of \$9,000. (R. p. 74, lines 4-6, lines 10-12). In response, Regime Solutions's offer was around \$35,000. (R. p. 70, line 10, lines 23-24). The Hales offered the successful bidder \$9,000, which is approximately a 300% profit from the bid amount that they paid. (R. p. 74, lines 2-6). When the Master asked Regime Solutions whether they had considered coming to mutual agreement, attorney for Regime Solutions stated "my client is not being what I consider reasonable in their expectations." (R. p. 66, lines 10-11). He also stated that, "my client recognized that the property had equity in it, and they declined their offer." (R. p. 70, lines 1-4). The refusal to accept the 300% profit that the Hales offered is not coming to the court in equity. Thus, in equity, Regime Solutions cannot request that the court uphold the decision by the Master.

In addition, when Regime Solutions offered a bid amount around \$3,000 it was not acting in equity. Regime Solutions was the successful bidder at the foreclosure sale, paying \$3,036 for the property. Regime Solutions also has stated that it looked into the equity in the property, and also was aware of the senior mortgage. (R. p. 70, lines 1-4). Firstly, if Regime Solutions was aware of the equity in the home at the time they made the bid, then it was aware that it was purchasing \$59,000 of equity in someone's home for \$3,036. This demonstrates that Regime Solutions was not acting in equity.

Secondly, if Regime Solutions did not know how much of the principal had been paid, it was public record that there was a mortgage on the property in the original amount

of \$99,037. (R. p12). The bid of \$3,036 is noticeably lower than \$99,037. Bidding 3.1% of a property value according to the publicly recorded note and mortgage is not acting in equity.

According to the equitable maxim “those who seek equity must do equity,” and as evidenced by the offers by the Hales and by Regime Solutions, this bidder cannot ask that the court do equity. However, the Hales have come to this court seeking equity and doing equity. Therefore, the denial of the Motion to Vacate Sale should be reversed because the Hales have come to the court doing equity.

iii. The court must weigh circumstances when considering the equitable maxims that equity regards substance over form and equity looks to the intent rather than the form.

The Master applied a calculation that ignores the substantive effect on the parties and is not the purpose for which he applied the calculation. “[W]here a substantive right exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004). As stated above, Appellants in this case argue that the calculation applied by the Master was incorrect as an error of law. However, if this is found to be the correct calculation,¹ the Master applied form over substance. The calculation to find whether the bid amount shocks the conscience of the court is meant to find the fairness of the bid amount. The Master applied a calculation that does not seek to find the fairness of the bid, but instead adds encumbrances that are not the legal responsibility of the bidder. The calculation also does not access the fairness of the amount because it gives the bidder \$59,000 of equity for \$3,036. In applying the calculation

¹ The calculation Appellants are referring to is the one applied in the Master’s Order Denying the Motion to Vacate the Sale. (R. p. 13) ([Bid amount + senior lien] / appraisal value).

in its Order, the Master violated the equitable consideration that equity regards substance over form and equity looks to the intent rather than the form.

b. The lower court erred when it did not consider the equitable arguments brought forth by the parties

There is no evidence in this record that indicates the Master exercised his discretion. “It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.” *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (Ct. App. 1990).

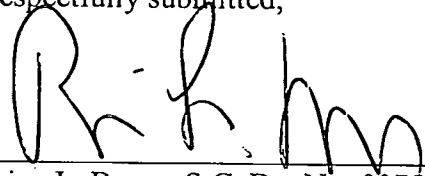
In this case, the Master did not exercise his discretion. In the pertinent case law, the courts carefully considered the circumstances when making their ruling. *See generally, Bloody Point Prop. Owners Ass'n, Inc.*, 410 S.C. 62, 762 S.E.2d 729; *Arrow Bonding Co.*, 399 S.C. 603, 732 S.E.2d 622; *Wells Fargo Bank, NA.*, 378 S.C. 147, 662 S.E.2d 424; *Investors Sav. Bank*, 303 S.C. 15, 397 S.E.2d 780. There is no evidence that the Master considered the circumstances specific to this case, such as the large amount of equity in the home and the Appellants’ presentation of all necessary values. In addition, there is no evidence that the equitable argument brought forth by the Hales was considered at all. The Master incorrectly assumed that it was required to accept the equation in *Arrow Bonding*. (R. p. 13). Thus, the Master applied the law because he thought he had no basis with which to accept the Appellants’ equation. As stated above, this is in error. By not exercising his discretion, the Master erred and the decision to deny the Motion to Vacate should be reversed.

CONCLUSION

The lower court erred when it denied the Appellants’ Motion to Vacate the Sale because the sale price shocks the conscience, and because equity demands that the decision

be overturned. Therefore, the Master's decision should be overturned and the sale should be vacated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. L. Boger', written over a horizontal line.

February 3, 2016

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Appellate Case No. 2015-001807

RECEIVED

FEB 16 2016

SC Court of Appeals

Winrose Homeowners
Association, Inc. and Regime
Solutions, LLC

Respondents,

v.

Devery A. Hale and Tina T.
Hale,

Appellant.

**FINAL BRIEF OF RESPONDENT WINROSE
HOMEOWNERS ASSOCIATION, INC.**

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STATEMENT OF ISSUES ON APPEAL

I. WAS THE TRIAL COURT CORRECT IN HOLDING THAT REGIME SOLUTIONS, LLC'S FORECLOSURE SALE BID DID NOT SHOCK THE CONSCIENCE?

STATEMENT OF THE CASE

Respondent Winrose Homeowners' Association, Inc. ("HOA") filed suit against Appellants Tina T. Hale and Devery A. Hale ("Hales") on February 11, 2014 seeking foreclosure of an unpaid homeowners' association assessment lien. (R. pp. 16-17.) The Hales were served February 14, 2014 and subsequently failed to submit any responsive pleading. (R. p. 20.) A default damages hearing was held June 30, 2014 and the Hales did not appear. (R. p. 6.) Judgment was entered in favor of HOA on July 21, 2014. (R. pp. 6-11.) The foreclosure sale was held August 4, 2014. (R. p. 25.) Respondent Regime Solutions, LLC ("Regime Solutions") was the winning bidder at \$3,036.00. (R. p. 25.) The sale was confirmed on October 17, 2014 and a deed was issued to Regime Solutions. (R. p. 25.)

On November 4, 2014 the Hales filed a Motion to Vacate Sale on the ground the sale price was so grossly inadequate it shocked the conscience. (R. pp. 29-32.) A hearing on the Hale's motion was held on February 6, 2015. At this hearing Tina Hale submitted an affidavit admitting that she received notice of the foreclosure suit and that she "put [the papers] in a drawer and forgot about them." (R. p. 49.) The Hales also presented evidence that the subject property is currently worth \$128,000. (R. pp. 30-46.) The Hales further stated that their current mortgage balance was \$66,004.00. (R. p. 48.)

On April 21, 2015 the Master in Equity entered an order denying the Hales' motion. (R. pp. 12-14.) On August 21, 2015 the Hales served the Notice of Appeal on both Respondents. (R. p. 55.)

STANDARD OF REVIEW

The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court. Wells Fargo Bank, N.A. v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). “An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions.” Carson v. CSX Transp., Inc., 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

ARGUMENTS

I. THE TRIAL COURT CORRECTLY UPHELD THE JUDICIAL SALE BECAUSE THE PURCHASE PRICE WAS MORE THAN 53% OF THE VALUE OF THE PROPERTY

“A judicial sale should not be set aside except for cogent reasons. The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final.” E. Sav. Bank, FSB v. Sanders, 373 S.C. 349, 355, 644 S.E.2d 802, 805 (Ct. App. 2007) (quoting Spillers v. Clay, 233 S.C. 99, 104, 103 S.E.2d 759, 761-62 (1958)). “[I]t is the long-established policy in South Carolina that ‘[t]he courts should be particularly jealous of the integrity of judicial sales.’” Ex parte Johnson, 371 S.C. 614, 618, 640 S.E.2d 887, 890 (Ct. App. 2006) (citing In re Wilson, 141 S.C. 60, 63, 139 S.E. 171, 172 (1927)). “[A]ny conduct on the part of those actively engaged in the selling or bidding [at a judicial sale] that tends to prevent a fair, free, open sale, or stifle or suppress free competition among bidders, is contrary to public policy[.]” Id. (citing Ex parte Keller, 185 S.C. 283, 291, 194 S.E. 15, 19 (1937)).

A. Senior Encumbrances Must Be Included in the Calculation of the Purchase Price in the “Shock the Conscience” Analysis

“South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court. However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a **property's actual value**, have our courts consistently

held the discrepancy to shock conscience of the court.” E. Sav. Bank, FSB at 359, 644 S.E.2d at 807 (emphasis added).

Where a buyer takes property at a judicial sale subject to senior liens, the court must also consider the amount of those senior encumbrances “in determining the true value of the properties to the buyer at [the judicial] sale.” Arrow Bonding Co. v. Warren, 399 S.C. 603, 607, 732 S.E.2d 622, 624 (2012). The Supreme Court specifically held that Wells Fargo Bank, N.A. v. Turner, 378 S.C. 147, 662 S.E.2d 424 (2008) and Investors Sav. Bank v. Phelps, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990) were inapplicable in considering a sale in execution of a judgment because in the former the mortgage foreclosure removes the encumbrance and in the latter case the “buyer takes the property subject to the mortgage as well as other liens.” Id. The Court in Arrow Bonding unequivocally held that senior encumbrances must be part of the calculation. Id.

Nonetheless, the Hales argue that this Court should not consider any senior encumbrances in the “shock the conscience” analysis where the plaintiff in the foreclosure suit is a homeowners’ association. In support of this argument the Hales cite Bloody Point Prop. Owners Ass’n, Inc. v. Ashton, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014). The Hales argue that Bloody Point was an HOA foreclosure, whereas the other cases analyzing the “shock the conscience” threshold were not. However, the Hales fail to specify how an HOA foreclosure is fundamentally different from any other foreclosure or judicial sale case. Instead, the Hales state that “an HOA lien is that of a second lien to the mortgage but the [Bloody Point] court did not consider senior liens in its calculation.” (Br. p. 7.) Nowhere in Bloody Point does the court state that the HOA lien was a junior lien. While it is true that most homeowners’ association liens will be junior to at least a purchase money mortgage, this is not always the case. In fact, the Master in Equity in Bloody Point considered the sales price to be \$11,593.20. Order Denying Def.’s Mot. to Vacate p. 3-4, Bloody Point Prop. Owners’ Assoc., Inc. v. Ashton, Case No. 2011-CP-07-2176 (Beaufort County Ct. of Common Pleas, July 25, 2012). The court reached this figure by adding the foreclosure sale bid of \$8,800.00 to \$2,793.20 in past due assessments and property taxes due on the property. Id. The trial court held these amounts must be included in the purchase price because they had to be paid for the

foreclosure bidder to “obtain the Property free and clear of all liens.” Id.

Just as the trial court reasoned in Bloody Point, a court must take senior encumbrances into consideration because the purchaser at sale must pay those senior encumbrances if it wants clear title to the property. Whether it assumes regular payments of the mortgage, pays the outstanding balance immediately, or pays the balance at a subsequent transfer of the property, in order to exercise full ownership of the property it must clear those encumbrances.

At the January 2015 hearing Regime Solutions indicated it intended to pay off the senior mortgage if the Hales’ motion was denied. (R. p. 60, l. 15-18.) Nonetheless, the Hales’ urge this court not to consider the senior encumbrances because Regime Solutions is not personally liable to pay the balance owed on the senior mortgage. However, this argument confuses an obligor’s personal liability under a note and a property owner’s interest in real property secured by a mortgage. As the new owner of the subject property, Regime Solutions must payoff the senior encumbrances if it wants to maintain ownership of the property. Regime Solutions’ lack of personal liability in no way diminishes the effect of the lien on the value of the real property in Regime Solutions’ hands. The question before the court is whether the consideration given by Regime Solutions for the real property is so low that it shocks the conscience. The evidence before the trial court was that Regime Solutions took the property subject to a senior mortgage and that Regime Solutions intended to payoff that senior mortgage to clear title to the property. That consideration was clearly more than 10% of the fair market value of the property.

It is simply inequitable to require a purchaser at foreclosure sale to pay at least 10% of the fair market value of the property free and clear of any encumbrances and then also payoff the senior encumbrances with no credit for the diminution in value caused by those same encumbrances.

B. The Trial Court Correctly Calculated the Purchase Price by Adding the Outstanding Senior Encumbrances to the Foreclosure Sale Bid.

“When addressing the value paid in the context of a foreclosure sale, the winning bid should be considered cumulatively with any encumbrances to which it would be

subjected.” In re Cerrato, 504 B.R. 23, 35 (Bankr. E.D.N.Y. 2014) (citing In re Barr, 170 B.R. 772, 777 (Bankr. E.D.N.Y. 1994)(applying South Carolina law in holding the aggregate bid price included senior mortgages and taxes due on the property)). Our Supreme Court has clearly stated that courts must analyze what impact the senior encumbrances have on the true value of the property. Where a buyer takes property at a judicial sale subject to senior liens, the court must also consider the amount of those senior encumbrances “in determining the true value of the properties to the buyer at [the judicial] sale.” Arrow Bonding Co., 399 S.C. at 607, 732 S.E.2d at 624.

The Master in Equity correctly held that the effective sales price is the bid amount plus the encumbrances against the property. This calculation is the most logical calculation where a purchaser takes title at a foreclosure sale and must expend additional sums to obtain clear title to the property. The focus is on the value of the property and what impact senior encumbrances will have on that value, not the value of the purchaser’s bargain or the cost to the foreclosed property owner. Here, the outstanding mortgage of \$66,000 cuts the fair market value in half. The outstanding mortgage, coupled with Regime Solutions’ \$3000 bid, creates an aggregate bid of \$69,000. The aggregate bid is more than 53% of the fair market value of the property. Accordingly the Master in Equity correctly upheld the foreclosure sale.

C. To Base the “Shock the Conscience” Analysis on the Owners’ Equity in the Property Would Impermissibly Chill Bidding at Judicial Sales

The Hales alternatively argue the court should divide the bid amount by the equity in the property to properly determine whether the successful bid “shocks the conscience” of the court. The Hales’ position is problematic in that it requires any potential bidder to somehow divine the amount of equity in the property so as to formulate a bid high enough to overcome the “shock the conscience” threshold. A bidder could likely estimate the fair market value of the property based on the tax assessed amount and other public information. However, a bidder has no way of knowing the current amount of any mortgage, judgment, or other lien encumbering the property at the time of the sale. The public record would only indicate the amount of the senior mortgage, judgment, or other lien at the time that lien was filed. Because senior lienholders are not necessary

parties in the underlying foreclosure suit they are often not named as parties. Accordingly, the judgment of foreclosure and sale often does not disclose the current balance of any senior encumbrances. There are a multitude of the federal privacy acts that would forbid a senior lienholder from disclosing the payoff amount to an interested bidder prior to the sale.¹ In fact, because South Carolina does not require servicers to contemporaneously record assignments of mortgages, the public record may not even disclose to any interested bidder the current mortgage holder or servicer of the loan.

The Hales argue that the HOA should be responsible for determining the equity in the property prior to sale. However, the Hales seem to admit that the HOA only has access to the public record showing the original mortgage.² (App. Br. p. 11.) The Hales' proposal would require the HOA to track down the current mortgage holder or servicer of any senior mortgage, convince that servicer to violate federal law by releasing information about its borrowers' current balance, determine how much equity is in the property in light of that information, and then formulate a bid that exceeds the 10% threshold. This process would not only impermissibly chill the bids at every foreclosure sale of a junior lien, it is impossible in practice.

D. The Trial Court Correctly Exercised Its Discretion in Upholding the Foreclosure Sale.

The Hales argue that the Master in Equity refused to exercise his discretion by failing to consider the specific circumstances of this case, by failing to consider the Hales' equitable argument, and because he thought he was required to accept the equation outlined in Arrow Bonding. (App. Br. p. 16.) However, the Order does not support this analysis. Specifically, the Order indicates the Master in Equity considered "the motions, and arguments of the respective parties . . ." (R. p. 13.) The Hales outlined the majority of their argument in their Motion to Vacate. The February Transcript indicates the trial

¹ See Fair Debt Collection Practices Act, 15 U.S.C.A. § 1692c; Gramm-Leach-Bliley Act 15 U.S.C.A. § 6801 et seq.

² The Hales incorrectly allege that the HOA has access to the "amount of the original note." (App. Br. p. 11.) However, the note is a secured instrument and is not typically filed in any public record. Only the mortgage is filed. This is significant because the mortgage typically does not contain certain provisions like interest rate, advance clauses, or escrow provisions that a bidder would need in order to estimate the current balance due on the note and mortgage.

court heard oral arguments for over thirty minutes from all parties. (R. p. 63.) The Hales have presented no evidence that the Master in Equity did not consider these written and oral arguments in rendering his decision.

As discussed more fully below, the Hales' only mention of equity is asking the court to do equity where equity should be done. (R. p. 82, l. 1.) Furthermore, it is evident from the trial court order that the Master in Equity did consider the equities in this case. Specifically, the last paragraph of the Order indicates the Master in Equity considered the impact a contrary ruling would have on creditors holding a second lien such as the HOA in this case. (R. p. 13.)

Finally, nowhere in the Order does the Master in Equity indicate that he believes Arrow Bonding case to be controlling authority. Instead, the Master in Equity indicates that he “**declines to adopt** the calculation advanced by the Defendants and **instead adopts** the calculation of the bid amount in the fashion set forth in the South Carolina Supreme Court case Arrow Bonding Company v. Warren.” (R. p. 13.) The Master in Equity clearly understood there were two possible methods of calculation before him. He affirmatively exercised his discretion by adopting the Respondents' method of calculation over that of the Hales.

The Hales confuse the Master's choice of adopting a position contrary to the Hales' position as an abuse of discretion or lack of exercising his discretion. The Hales cannot show that the Master in Equity made an error of law or otherwise abused his discretion. Accordingly, the trial court's order should be affirmed.

II. THE PRINCIPLES OF EQUITY REQUIRE THE SALE BE UPHELD

A. Appellants' Equitable Arguments Are Not Preserved for Appellate Review because Appellants Failed to Raise the Arguments to the Trial Court

“In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court.” Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 372, 628 S.E.2d 902, 919 (Ct. App. 2006). “Issue preservation rules are designed to give the trial court a fair opportunity to rule on the

issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” Id.

The Hales argue that the trial court abused its discretion by failing to weigh equitable maxims and principles. (App. Br. p. 11.) However, the Hales never raised any equitable arguments in their Motion to Vacate. They only mention the idea of equity once in their entire argument before the trial court. (R. pp. 81-82, l. 24-1.) Specifically, the Hales merely asked the trial court to “do equity where perhaps equity should be done.” (R. p. 82, l. 1.) Now, in their appeal, the Hales seek to raise five different equitable maximums in support of their arguments. Because these arguments were not raised to the trial court and the trial court was not given the opportunity to rule them, these arguments are not properly before this court for consideration.

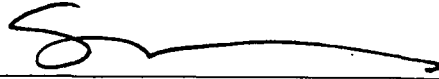
B. Appellants are not Entitled to Equity Because Equity Rewards the Diligent

“Equity rewards the diligent, not those who sleep on their rights.” In re Houston, 409 B.R. 799, 811 (D.S.C., 2009). The Hales were personally served with the Summons and Complaint in this matter on February 14, 2014 but failed to make any response to the HOA’s suit. The Hales similarly failed to appear at the final foreclosure hearing in August 2014. In fact, the Hales failed to make any appearance or attempt to pay for over 8 months. The Hales have provided no explanation for their failure to participate in the foreclosure suit other than that Tina Hale forgot about the lawsuit paperwork. (R. pp. 48-49.) Nonetheless, the Hales argue extensively that the trial court violated principles of equity by failing to vacate the sale. Essentially the Hales have admitted that they failed to participate in the underlying foreclosure suit or foreclosure sale but are asking the court to save them from their negligence and allow them to pay the debt now, over a year after the original sale. The principles of equity are not used to save a litigant from his own failure to protect his interests and should not be used to overturn a sale that followed all the statutory requirements.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Master in Equity.

Respectfully submitted,



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February 15, 2016.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. Joseph M. Strickland, Master-In-Equity

Case No. 2015-001807

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v.

Devery A. Hale and Tina T. Hale.....Appellants.

FINAL BRIEF OF RESPONDENT, REGIME SOLUTIONS, LLC

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION IN DETERMINING THAT THE SALE PRICE PAID BY REGIME SOLUTIONS, LLC DID NOT SHOCK THE CONSCIENCE OF THE COURT.

II. WHETHER THE EQUITABLE PRINCIPLES ADVANCED BY APPELLANTS IN THE INSTANT APPEAL WERE PROPERLY RAISED TO THE TRIAL COURT FOR CONSIDERATION AND, IF SO, WHETHER THE TRIAL COURT COMMITTED ERROR IN ITS APPLICATION OF EQUITABLE PRINCIPLES TO THE CIRCUMSTANCES OF THIS CASE.

STATEMENT OF THE CASE

This appeal arises from the denial of Appellants' Motion to Vacate Sale of a homeowner's association (HOA) foreclosure of lien. On February 24, 2014 Respondent, Winrose Homeowner's Association, Inc. ("Winrose") filed a Complaint for foreclosure of a HOA lien against 25 Caddis Creek Court, Irmo, SC 29063. (R.p 16-17). Thereafter the Appellants were served with the same and they failed to issue a responsive pleading or otherwise appear and defend the action for foreclosure. (R.p 2-4; 16-17; 18-19; 20; 48-49). Accordingly, the case was referred to the Master-in-Equity, who thereafter issued a decree of foreclosure. (R.p 2-4; 6-11; 20). Thereafter the subject property sold at judicial sale on August 4, 2014 subject to any and all valid senior encumbrances on the property, including but not limited to a recorded mortgage on the subject property in the Richland County ROD at Book R 64, Page 617 and in the amount of \$99,037.00. (R.p. 6-11). The winning bidder, Regime Solutions, LLC (RS), paid the bid price of \$3,036.00 into the court. (R.p. 92-94). This Court issued a Master's Deed to RS which was filed on August 22, 2014 in the Richland County ROD in Book 1968, Page 266.

(R.p. 92-94; Master's Deed). Thereafter RS sought to be put in possession of the property and filed a Rule to Show Cause on September 16, 2014. (R.p. 21-24). Appellants' Motion to Vacate Sale followed and was considered in advance of ruling on RS' Rule to Show Cause as the outcome of Defendants' motion was controlling over RS' motion. (R.p 63). The Appellants' Motion to Vacate Sale was heard on February 6, 2015 by the Honorable Joseph M. Strickland, Master-in-Equity for Richland County and on April 21, 2015 Judge Strickland filed an Order Denying the Motion to Vacate Sale. (R.p. 12-14). Appellants filed the instant Notice of Appeal on August 21, 2015.

FACTS

The sole basis for setting aside the sale advanced by Appellants' Motion to Vacate Sale was that the sale price "shocks the conscience". (R.p. 29-47). No additional or contributing factors were asserted by Appellants in their motion. It is undisputed that RS purchased the property subject to a recorded mortgage on the subject property in the Richland County ROD at Book R 64, Page 617 and in the amount of \$99,037.00. (R.p. 6-11). Additionally, Defendants offered evidence that the principal balance presently owing on said mortgage is \$66,004.00, which was not disputed by any party. (R.p. 29-47; 70, 8:10-9:10). It is also not disputed that the present fair market value of the subject property is estimated to be approximately \$128,000. (R.p. 29-47; 72, 10:22 – 10:25).

STANDARD OF REVIEW

"A real estate foreclosure is an action in equity." *MI Co., Ltd. v. McLean*, 325 S.C. 616, 482 S.E.2d 597 (Ct. App. 1997). In an action in equity referred to a master for final judgment, an

appellate court may find facts according to its own view of the preponderance of the evidence; however, it is not required to ignore the trial judge's findings. *K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 571, 682 S.E.2d 252, 256-57 (2009). However, the determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court. *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012). The appellant in an equity matter has the burden of persuading the appellate court of reversible error. *Pinckney v. Warren*, 344 S.C. 382, 544 S.E.2d 620 (2001).

ARGUMENTS

A judicial sale can be set aside for two reasons: (1) if the inadequacy of the price is so gross as to shock the conscience of the court; or (2) if the price is inadequate and this inadequacy is accompanied by other circumstances that warrant the interference of the court. *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008) (quoting *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)). Mere inadequacy of sale price is no ground for setting a judicial sale aside unless some unfair means have been employed to prevent competition at a judicial sale. *Ex parte Cooley*, 69 S.C. 143, 154-55, 48 S.E. 92, 95 (1904). Circumstances warranting interference of the court "should relate to the conduct of the officer making the sale ... or to the conduct of the purchaser ... in the attempt to stifle competition ...". *In re Wallace*, 179 S.C. 480, 484, 184 S.E. 849, 851 (1936). "South Carolina has not established a bright line rule for what percentage the sale value must be with

respect to the actual value in order to shock the conscience of the court.” *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 71, 762 S.E.2d 729, 734 (Ct. App., 2014); citing *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007). “However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property’s actual value, have our courts consistently held the discrepancy to shock conscience of the court.” *Id.* In a junior lien sale, unlike a senior mortgage foreclosure sale, the buyer takes the property subject to any senior mortgage as well as other senior liens and therefore the trial court must consider the amount of mortgages and other liens in determining the true value of a property to a buyer at a judicial sale. *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012); citing *Norman v. Norman*, 26 S.C. 41, 11 S.E. 1096 (1886).

Although the identical situation herein has not been addressed by the appellate courts of this State, the Supreme Court in *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012) addressed a closely analogous situation and came to the same conclusion as the trial court in this case. Respondent asks that the Court affirm the judgment of the trial court for the reasons detailed below.

I. THE TRIAL COURT EMPLOYED A PROPER CALCULATION IN DECIDING WHETHER THE BID SHOCKED THE CONSCIENCE OF THE COURT.

South Carolina has not established a bright line rule for what percentage the sale price must be with respect to the actual value in order to shock the conscience of the court. *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 71, 762 S.E.2d 729, 734 (Ct. App., 2014). “However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property’s actual value, have our courts consistently held the discrepancy to shock conscience of the court.” *Id.* Although the adequacy of a bid in exact circumstances of

this case has not been addressed by the appellate courts of this State, Respondent contends *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012) addressed a closely analogous situation and is controlling in this case.

In *Arrow* the Appellant, Warren, appealed the denial of his Motion to Set Aside Sale. *Id.* Respondent, Arrow Bonding Company, obtained a \$5,120.00 judgment against Warren. In August 2007, the clerk issued a Judgment Execution, and on September 19, 2007, the sheriff issued an Execution Account Statement. *Id.*, 399 S.C. at 605. Respondent brought an action to foreclose its judgment lien, which Warren did not answer, and the clerk granted Respondent's motions, ordering entry of the default against Warren, and referring the matter to the Master-in-Equity for a judicial sale. *Id.* The Master issued a deed to Respondent, who was the successful bidder on all of Warren's properties. *Id.* Warren filed a Motion to Set Aside the Sale, which the Master-in-Equity denied. *Id.* On appeal, the Supreme Court concluded that the Master-in-Equity did not err in refusing to set aside the sale. *Id.*

There are two significant distinctions in the *Arrow* case that are particularly applicable to the instant case: (1) the calculation employed by the Master in determining whether the selling price was grossly inadequate; and (2) the distinction the Court drew between adequacy of sales price in mortgage foreclosure sales as opposed to other sales where the buyer takes the property subject to mortgage as well as other liens. The Master found that tax assessment records submitted by Warren reflected a combined value of \$263,121 and were sufficient to establish the value of the properties sold. *Id.*, 399 S.C. at 606. Although the Master noted the sale price of \$2,500 when compared to the \$263,121 assessed value of the property would normally shock the conscience, the Master went on to find that there existed mortgage liens totaling more than

\$88,000 and a federal tax lien in excess of \$12,000 which should be considered in determining the effective sales price paid by the buyer. *Id.* Since the properties sold remained encumbered by the mortgages and the tax lien, the Master added \$100,000 to the sales price for a total of \$102,500 and concluded that the effective sales price of \$102,500 represented about 39%, which did not justify setting aside the sale. Although Warren argued on appeal that the Master erred in not judging inadequacy of sale price by comparing the sales price to the properties' value, without considering mortgages or liens, citing *Investors Savings Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct.App.1990), and *Wells Fargo Bank, N.A. v. Turner*, 378 S.C. 147, 662 S.E.2d 424 (2008), the Supreme Court disagreed and concluded that in a sale where the buyer takes property subject to mortgage and other liens the Master properly considered the amount of mortgages and liens in determining the true value of the property to the buyer at sale. *Id.*, 399 S.C. at 607. In so ruling, the Supreme Court specifically distinguished both *Phelps* and *Wells Fargo*:

In both *Phelps* and *Wells Fargo* the judicial sale was to foreclose a mortgage rather than a sale in execution of a judgment. The effect of a mortgage foreclosure sale is to remove the mortgage encumbrance from the property, and therefore the amount of the mortgage is a fair gauge of the property's value in the hands of the buyer. In a judgment execution sale such as this, however, the buyer takes the property subject to the mortgage as well as other liens. [citation omitted] The Master properly considered the amount of the mortgages and tax liens in determining the true value of the properties to the buyer at an execution sale.

Id. Accordingly, the Court concluded Warren did not meet his burden of showing an abuse of discretion in the Master's finding that the sale price was not so grossly inadequate as to shock the conscience.

Similarly, in the present action Appellants appealed the denial of their Motion to Set Aside Sale based upon the alleged error of the Master to consider the inadequacy of sale price by comparing the sales price to the properties' value, without considering mortgages or liens. As in *Arrow*, the Master in the instant case found that evidence submitted by the parties reflected a property value of \$128,000. (R.p. 12-15). Likewise, the Master in the instant case went on to find that there exists a mortgage lien totaling \$66,004. (R.p. 12-15). Since the property sold remained encumbered by the mortgage, the Master added \$66,004 to the sales price of \$3,036 and concluded that the effective sales price of \$69,040 represented about 54% of the property's value, which did not justify setting aside the sale. (R.p. 12-15).

The only other case cited by the Appellants for the proposition that the calculation of the sales price should not consider senior liens is *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App., 2014). *Bloody Point* is admittedly a HOA foreclosure case addressing the adequacy of a bid amount, but it does not address the issue of whether senior liens need be considered in determining a sales price. Not once in the entire opinion is there a discussion of the existence of or the propriety of considering senior liens continuing to encumber the property purchased by the buyer at the foreclosure sale. In fact, contrary to the Appellant's assertion, the Master in *Bloody Point* determined that the buyer had paid an effective sales price of \$11,593.20 for the property, which figure was derived from the amount of the buyers bid amount of \$8,800 plus "\$2,793 in taxes and fees unpaid by Appellants" and therefore added to the sale price. *Id.*, 762 S.E.2d at 731. This addition of taxes and fees to the sales price was implicitly adopted by the *Bloody Point* Court in its determination that the Respondents purchased the property for \$11,593.20 and that the "master applied the correct legal standard in making his

determination.” *Id.*, 762 S.E.2d at 734. Therefore, Appellants have not met their burden of showing an abuse of discretion in the Master's finding that Respondent's bid is not so grossly inadequate as to shock the conscience and accordingly the finding of the court below should be affirmed.

a. Equity in a property is an improper and unworkable consideration in determining whether a bid shocks the conscience of the court

Contrary to Appellants’ assertion, as set forth *supra* there is precedent in South Carolina for how the percentage is determined to decide whether a bid shocks the conscience of the court. On the other hand, there is absolutely no precedent for the proposition that equity in a home is to be considered in such a calculation. Nothing is more demonstrative of this fact than the Appellants’ reliance on a calculation loosely mentioned by the non-binding precedent set forth by the United States Bankruptcy Court of the Southern District of New York in *In re 824 South East Boulevard, Inc.*, No. 12-01028, 2012 WL 3561981 (S.D.N.Y. Aug. 17, 2012). What is telling about this particular case is the entire discussion of whether a sales price would shock the conscience is dicta by the *In re 824* Court:

Calculation of the percentage of fair market value paid ... requires a determination of the status of the Judgment Lien and possibly the value of the Premises, neither of which is feasible on the present record. ... New York docketing statutes, including CPLR 5018 and 5203, do not appear to address this issue, which has not been briefed, and the judgment creditors have not appeared on this motion. ... As the Defendants conceded at oral argument, resolving this issue may require an evidentiary hearing, depending on the outcome of Expo’s litigation regarding the status of the Judgment Lien.

Id. The fact is, the *In re 824* Court made no conclusions or determination concerning whether the sale price shocks the conscience, concluding simply that there was insufficient information before the court for such a determination, that such a determination was contingent on the

disposition of a related case, and the Court therefore denied “summary judgment without prejudice to renewal on the issue of whether the sale price paid at the foreclosure sale was unconscionably low and therefore 17 may be avoided under BFP and Bankruptcy Code § 548(a)(1)(B).” *Id.*

Perhaps more persuasive than the dicta of the United States Bankruptcy Court of the Southern District of New York is the fact that there is no binding precedent in this State to support the contention that equity is a consideration in the determination of the adequacy of a judicial sales price. There are a host of cases discussing the valuation of property and the determination of an effective sale price paid by a buyer (see *Investors Savings Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct.App.1990); *Wells Fargo Bank, N.A. v. Turner*, 378 S.C. 147, 662 S.E.2d 424 (2008); *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012); and *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App., 2014). However, there is not one that adequacy of a sales price in terms of equity. Perhaps this is because it is simply a quantity that is unknowable by the court, the foreclosing party, or the innocent purchaser for value. The only party to a foreclosure action with that knowledge would be the foreclosed homeowner. The fact is that Mortgage Notes are not recorded as part of real estate transactions in South Carolina. While the Mortgage or pledge of property as collateral is recorded the Note or obligation for repayment is not. So the affected homeowner is the party uniquely in possession of or capable of gaining possession of this information. There are a host of statutes prohibiting the disclosure of non-public personal information to anyone other than the borrower or his designee: *Gramm-Leach-Bliley Financial Services Modernization Act* (GLB Act), Title V of the Financial Services Modernization Act of 1999, Pub. L. No. 106-102, 113

Stat. 1338 (Nov. 12, 1999) (codified at 15 U.S.C. §§ 6801, 6809, 6821, and 6827); 16 C.F.R. part 313 (implementing privacy rules pursuant to GLB Act); *Fair Debt Collections Practices Act* (FDCPA) Pub. L. 95-109; 91 Stat. 874, September 20, 1977 (and as subsequently amended) (codified as 15 U.S.C. § 1692 –1692p) to name just a couple.

Perhaps the lack of precedent for considering equity in a determination of the adequacy of a sale price is because the information that is discernible by the court, the foreclosing party, or the innocent purchaser for value is at best speculative. While the amount and duration of a mortgage is public record, one can only speculate as to the status of the loan that the mortgage secures. It is quite possible the underlying loan is an interest only loan with a balloon payment where the only equity discernible would be appreciation in the value of the property. It is also possible that the loan instrument that is not public record contemplates future advances or was modified by the lender at some time between the loans origination and the present action.

Perhaps the lack of precedent for considering equity in a determination of the adequacy of a sale price is because the only information available concerning the value of a property that is discernible by the court, the foreclosing party, or the innocent purchaser for value is the tax assessed value. This value might be inaccurate for any number of reasons: the condition of the property has significantly improved or declined since the last assessment; the property has not been revalued by the tax assessor for a lengthy period; prior assessments were deflated or inflated due to the comparable sales in a neighborhood, etc.

The simple truth is that a determination of equity without the provision of information by the affected homeowner is speculation and conjecture. In fact, the *Arrow Bonding* Court stated that there was no authority which requires or permits the trial court to conduct a title search,

discover liens, determine the value of property and then calculate an adequate sale price. 399 S.C. 603, 608, 732 S.E.2d 622, 625 (2012). Using equity in determining the adequacy of a bid is not supported by any precedent in this State, represents an unworkable calculation, and improperly shifts the burden upon the trial court, the foreclosing party or the innocent purchaser for value to divine such a calculation. Therefore, this Court should reject the notion that equity should be considered in determining the adequacy of a bid at a judicial sale.

- b. In the alternative the affected if equity is to be considered as an alternative valuation method the burden for so proving should be shifted to the affected homeowner.**

In the alternative, if this Court is inclined to entertain equity as a novel alternative the existing precedential determination of the adequacy of a bid amount at a judicial sale, the Respondent suggests that the burden for so proving be shifted to the affected homeowner(s). As set forth *supra*, the affected homeowner(s) is in the best position to provide information on the equity in a property. Although there is no precedent for such a requirement, if this Court were to adopt a calculation including equity it would be consistent with the spirit of existing law to require the affected homeowner(s) to provide evidence of that equity. For instance, Rule 71(a) SCRCP provides that any party who has appeared in the action may present proof that the debt may be satisfied by selling the property in parcels, rather than selling the whole to satisfy the claims. Likewise, in the present circumstances, if the Court were to adopt equity as an alternative calculation to determine the adequacy of a bid, any party who has appeared, including the affected homeowner, could present proof that there is equity in the property such that the court could fashion a minimum bid amount that would not shock the conscience of the court. Although Respondent feels that this would have a chilling effect on competitive bidding and would place an unnecessary burden on the proceedings in light of existing precedent, if this

Court is inclined to adopt an equity calculation model Respondent would offer that placing the burden on affected party prior to sale is the only just and equitable way to do so.

This requirement on the burden would also be consistent with the existing law concerning bona fide purchasers at foreclosure sales. To be considered a bona fide purchaser without notice a party must show (1) actual payments of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase. *Robinson v. Estate of Harris*, 378 S.C. 140, 662 S.E.2d 420, 423, (S.C. App., 2008). A bona fide purchase is “in good faith and with integrity of dealing, without notice of a lien or defect.” *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006). There have been no allegations by the Appellants that Respondent has not satisfied each of the foregoing requirements.

The South Carolina Supreme Court in *Cumbie v. Newberry* held:

A sound public policy requires that the validity of judicial sales be upheld, if in reason and justice it can be done. In the furtherance of this principal, our decisions have applied the general rule, applicable here, that a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment, under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.

(*Cumbie v. Newberry*, 251 S.C. 33, 37, 159 S.E. 2d 915 (1968) (citing *Wingard v. Hennessee*, 206 S.C. 159, 33 S.E.2d 390; *Brownlee v. Miller*, 208 S.C. 252, 37 S.E.2d 658; *Bennett v. Floyd*, 237 S.C. 64, 115 S.E.2d 659).) Similarly, Respondent herein can only be charged with matters that are of the public record. If the affected homeowner established, prior to sale, that there was equity in the property then any would be bidder would be on notice that the bid amount needed to be a certain amount to be beyond challenge for adequacy. Even if this methodology is adopt with approval from this Court, the outcome of this particular action is nonetheless unchanged as

the Respondent, as bona fide purchaser, cannot be charge with knowledge concerning the equity in the property which was not a matter of public record. Therefore, the ruling of the Master below should be affirmed.

II. THE EQUITABLE PRINCIPLES ADVANCED BY APPELLANTS IN THE INSTANT APPEAL WERE NOT PROPERLY RAISED TO THE TRIAL COURT FOR CONSIDERATION.

Much is made by the Appellants of the alleged inequities in this case and the failure of the court to address equitable maxims in its Order denying Appellants' motion to vacate sale. However, what is not mentioned by Appellants is not once in their motion or at the hearing on their motion did the Appellants seek to invoke any particular maxim, stating only that "this Court has the ability in its gavel to do equity where perhaps equity should be done." (R.p. 81-82, 19:25 – 20:1). And factually in support of this loose equitable power the Appellants seek to invoke they offer only that they are hard-working people, that they stand to lose significant equity, that they attempted to offer a settlement to the Respondent, and that the Respondent was being unreasonable. (R.p. 80-82, 18:18-22, 20:2-10).

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Issue preservation requires, at a minimum that an issue be raised and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is "axiomatic that an issue cannot be raised for the first time on appeal." *Id.* This requirement "is meant to enable the lower court to rule properly after it has considered all relevant facts, law,

and arguments.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

In the instant action the Appellants never advanced any of the equitable maxims now being invoked for the first time on appeal. The closest the Appellants came was to implore the trial judge’s ability to use his gavel in furtherance of equity. Moreover, should the Appellants have desired the trial court to make a ruling on equitable issues they allegedly raised they had recourse to seek relief under Rule 59(e) SCRPC. “Where a matter is not ruled on by the Circuit Court, the issue is not preserved for appellate review unless the complaining party moves to amend the judgment pursuant to 59(e).” *Vespazianni v. McAlister*, 307 S.C. 411, 413, 415 S.E.2d 427, 428 (Ct. App. 1992); see also *Skinner v. Elrod*, 308 S.C. 239, 417 S.E.2d 599, 602 (Ct. App. 1992) (to properly preserve an issue for appeal one must make a motion for the master to alter or amend his order regarding a specific allegation). For this reason the equitable arguments advanced by Appellants are not properly before this court and therefore the order of the Master below should be affirmed.

- a. **Even if this Court were inclined to review the equitable maxims raised, equity nonetheless favors the Respondent.**

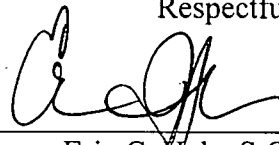
Equity aids the vigilant, not those who slumber on their rights. Equity follows the law. These principles were demonstrated in the case of *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 721 S.E.2d 447 (Ct. App. 2011). The *Nutt* Court found that the Respondent had an adequate remedy at law under contract and therefore seeking equitable relief was unnecessary and improper. *Id.* The *Nutt* Court went on to note that the possibility the statute of limitations potentially barring Respondent from obtaining a legal remedy was no ground in itself for allowing the Respondent to seek equitable relief. *Id.*

Similarly in the present case, it is undisputed that the Appellants were properly served and sat on their rights, issuing no responsive pleading, appearing at no hearing after notice, and in no way challenging the foreclosure. The Appellants herein could have challenged the proceedings and bid themselves at the sale to insure an adequate sale price was realized but they chose instead to wait until the sale was complete and an innocent purchaser for value was attempting to gain possession to challenge the proceedings. Equity does stand to provide a remedy to a party who sat on their rights. Equity also does not offer a remedy when there is an adequate remedy at law. For these reasons the decision of the trial court below should be affirmed.

Conclusion

For the reasons set forth above the decision of the Court below should be affirmed.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Hon. Joseph M. Strickland, Master-in-Equity

Case No. 2015-001807

Winrose Homeowners' Association, Inc and Regime Solutions, LLC.....Respondents,

v.

Devery A. Hale and Tina T. Hale Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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ARGUMENTS

I. THERE ARE IMPORTANT DIFFERENCES BETWEEN A FORCLOSURE OF A HOMEOWNERS' ASSOCIATION LIEN AND A FORECLOSURE OF A MORTGAGE.

Respondent Winrose Homeowners' Association, Inc. (Winrose) argues that Appellants have not shown how a homeowners' association (HOA) foreclosure is fundamentally different than any other foreclosure. In a typical HOA foreclosure fact pattern, the owner has a first and/or second mortgage, which may or may not be in default and/or in active foreclosure. The owners of these homes appear in court and routinely complain that the attorney fees are more than the amount owed to the association and that they are bewildered that they can be current on their mortgage, yet be foreclosed for a homeowners' association lien, evicted from their home, and lose all their equity. The owner learns that the property was bought pursuant to Covenants, Restrictions, and Bylaws that allow for foreclosure and eviction, and that attorney fees, if authorized by covenants and deemed reasonable by court review, can be greater than the amount of the debt to the association.

A HOA foreclosing its lien is a similar situation to a second mortgage foreclosing subject to a first mortgage ahead of the homeowners' association lien. A second mortgage has an advantage in that it made its business decision to lend money on knowledge that the first mortgage amount was based on the fair market value of the property. Purchasers of the property at the foreclosure sale will then take the property "subject to" any other encumbrance not extinguished by the foreclosure.

It is critical to understand the difference between "assuming" a senior mortgage and taking "subject to" a senior mortgage. The "assumption of mortgage" is defined as

“[t]he acquisition of real property coupled with the assumption of personal liability for debt secured by that property.” Black’s Law Dictionary (10th ed. 2014). Thus a purchaser may assume or take over the mortgage of the seller. Often this requires permission of the mortgagee. This is distinguishable from taking equity of redemption subject to a mortgage because in the latter case the grantee is not contractually bound to pay the mortgage. In a case where the grantee assumes the mortgage, he binds himself to the mortgagee to pay the mortgage and all its terms and conditions. Because a third-party bidder takes the property “subject to” and does not assume the senior loan debt, the third-party bidder can simply choose not to pay the senior lien and walk away with only the bid at risk.

II. A STATEMENT THAT A THIRD-PARTY BIDDER WANTS OR INTENDS TO PAY OFF SENIOR ENCUMBRANCES IS NOT EVIDENCE THAT IT HAS MADE SUCH PAYMENT OR WILL MAKE SUCH PAYMENT. FURTHERMORE, IT IS NOT GROUNDS TO ADD THE AMOUNT OF THE ENCUMBRANCE TO THE BID PRICE.

Winrose argues that Regime Solutions, LLC (Regime) indicated its intention to pay off the senior mortgage, and because of its desire to pay off the mortgage, the lien should be added to Regime’s bid to calculate its true bid amount. Winrose reasons that the language in *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012), implies that a senior encumbrance should be added to the bid price. These arguments fail scrutiny, both factually and legally.

The *Arrow Bonding* court infers that the third-party bidder has or will pay off the debt. Certainly if a third-party bidder actually pays off a senior mortgage, it should get credit for doing so in the analysis. In such a situation, a court would have to consider the homeowner’s equity against a third-party bidder’s actual amount paid. Such a fact pattern seemed to have occurred in *Bloody Point Prop. Owners Ass’n, Inc. v. Ashton*, 410 S.C. 62,

762 S.E.2d 729 (Ct. App. 2014), where the trial court added “\$2,793 in taxes and fees unpaid by Appellants” to the purchase price. *Id.* at 65, 762 S.E.2d at 731. It is implied the amounts were actually paid by the third-party bidder and that the payment was the reason taxes and fees were added to the bid amount. No language existed in *Bloody Point* to indicate the taxes due were still pending.

Here, however, there is no proof that the first mortgage debt has been released or ever will be released. Respondents are asking for Regime to receive a credit for something it did not pay. Regime is not obligated to pay the senior lien and has bought the property subject to the lien.¹ As noted in the Black's Law Dictionary definition above, “paying off” and being “subject to,” are two entirely different matters.

Furthermore, when a third-party bidder bids on property with a senior encumbrance, it has several options: pay off the senior lien, negotiate and then assign the bid to another person who then must pay off the lien, evict the owner and rent the property until first the mortgagee completes its foreclosure process, or simply default in complying with the bid, thereby forfeiting the initial bid fee. Court records in multiple counties can provide the numbers of monthly bid assignments and forfeited bids that the courts encounter during the sales process. There is a calculated analysis by third-party bidders and homeowners' associations when bidding that involves their bet on whether they can foreclose or evict on an owner and rent property on monthly terms fast enough to recoup

¹ A search of Richland County public records reveals Regime has purchased 43 properties between November 4, 2013, and September 8, 2015. Of those 43 properties, 18 have entered foreclosure, and 25 have open mortgages of record. Regime does not appear to have paid off one single encumbering lien of properties purchased within Richland County. Such searches were performed through the Richland County Public Index (<http://www5.rcgov.us/SCJDWeb/PublicIndex/disclaimer.aspx>) and the Richland County Register of Deeds (<http://www.richlandonline.com/Government/Departments/BusinessOperations/RegisterofDeeds.aspx>).

funds owed to the homeowners' association or spent by third-party bidders on a bid before the senior lien holder forecloses. There are records of numerous foreclosures where a senior lienholder forecloses on a homeowners' association or the entity that obtained title at a previous foreclosure.

Additionally, the third-party bidder receives the Master-in-Equity deed to the property without having to pay off the senior lien because the third-party bidder does not have to pay off the lien until the senior lien starts and completes the normal 5-6 months minimal to 2-3 years maximum process of filing the senior lien foreclosure, going through pre-hearing and post hearing loss mitigation before going to sale and foreclosing on the third-party bidder, who is now the record owner of the property. Again, this fact illustrates the critical difference between paying off versus being subject to a senior lien. Unless the lien is officially assumed or paid off by Regime, only Appellants will be liable to pay off the loan. Not doing so will harm their credit and could result in a significant monetary judgment against them.

Finally, Respondents' suggestion that a third-party purchaser's bid should be added to the encumbrance to determine whether the purchase price shocks the conscience has previously been rejected. Regime notes that the Supreme Court in *Arrow Bonding* seemed to have actually approved such methodology. However, Regime fails to recognize that in *Arrow Bonding*, the Master-in-Equity had no evidence presented to him that demonstrated the true value of the property. *Arrow Bonding* at 608, 732 S.E.2d at 624. Therefore there was nothing in the record, under the circumstances of that case, for the Supreme Court to give reason to alter the trial court's decision. *Id.* at 607, 732 S.E.2d at 624. In the present

case, evidence of the value of the property was presented, which the Trial Court failed to properly take into account.

Despite the decision in *Arrow Bonding*, in *Federal Nat. Mortg. Ass'n v. Brooks*, 304 S.C. 506, 405 S.E.2d 604 (Ct. App. 1991), the respondent third-party purchaser argued that his bid of \$875 added to the first mortgage balance represented “almost forty-nine percent of the total value of the property” and was therefore sufficient to not shock the conscience of the court. *Id.* at 509, 405 S.E.2d at 605-06. However, the Court of Appeals dismissed this argument and used a formula, which Appellants have set forth in their initial brief, to determine the bid of “\$875 for equity of over \$27,000” was inadequate and effectively shocked the conscience. *Id.* 510, 405 S.E.2d at 606.

III. RESPONDENT REGIME SOLUTIONS, LLC IS NOT A BONA FIDE PURCHASER, AND THE EXISTENCE OF A BONA FIDE PURCHASER WOULD NOT AFFECT THE COURT’S ABILITY TO REVERSE THE SALE.

In its brief, Regime states that there have been no allegations that it is not a bona fide purchaser. Appellants have made no such allegations because they were not necessary. As previously stated in their initial brief, “[a] judicial sale will be set aside when either: (1) the sale price is so gross as to shock the conscience; or (2) the sale is accompanied by other circumstances warranting the interference of the court.” *Wells Fargo Bank, N.A. v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 425 (Ct. App. 2008) (citing *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1943)). *Turner* is silent on the subject of bona fide purchasers and the existence of a bona fide purchaser does not limit a court’s ability to reverse a sale on the basis the sale “shocks the conscience.”

In fact, *Turner* emphasizes that “a purchaser at a judicial sale is deemed to have notice of all things disclosed by the record.” *Id.* at 151, 662 S.E.2d at 426. Regime succinctly

points out that a bona fide purchaser is “in good faith and with integrity of dealing, without notice of lien or defect.” *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006). The subject property at issue at the time of sale was, and currently still is, encumbered by a mortgage that was recorded with the Richland County Register of Deeds prior to this foreclosure of lien action. Regime is clearly not a bona fide purchaser because it had notice of a senior lien on the property. When a property is sold at foreclosure sale “subject to” a mortgage, there can be no bona fide purchasers.

IV. THERE WOULD BE NO CHILLING EFFECT ON FORECLOSURE SALES IF EITHER OF APPELLANTS’ FORMULAS WERE ADOPTED.

Regime presents many unsupported theories as to why no bright-line rule using equity in consideration to determine adequacy of a judicial sales price exists. One such theory is that such quantity is unknowable to the court and that enabling such rules would produce a chilling effect on sales. Appellants agree there is a strong policy for finality of sale and the desirability of a bright line shock the conscience ruling. There are, however, risks with purchasing properties at a foreclosure sale, of which Regime was aware prior to bidding.

Regime could have completed pre-sale research to obtain a better idea of the fair market value-to-debt ratio simply by reviewing tax assessments, reviewed the principal amount stated on the mortgage, or reviewed foreclosure file jackets to determine if a party to the foreclosure is in default. Further, if there was a foreclosure by the first mortgage holder pending, its complaint will contain allegations of note and mortgage terms, and often contain a copy of the note with the debt amount, interest rate, and terms. A prospective bidder can then make some educated guess as to the balance of the debt since they know they are taking property subject to a maximum first mortgage amount as stated on a

recorded mortgage. If a sales price is later challenged by the homeowner, he can provide evidence of equity, encumbrances, and appraisals of the property. The trial court could determine value of the property from such information, but it is not the duty of the court to investigate *sua sponte*.

Other courts have examined this policy argument. The Arizona *In re Krohn* case is persuasive authority for how courts of equity should evaluate the nature of the parties involved in a dispute seeking to set aside a judicial sale. *In re Krohn*, 203 Ariz. 205, 52 P.3d 774 (2002) (*en banc*). While the specific matter dealt with setting aside a deed of trust, the Supreme Court of Arizona applied a foreclosure sale analysis that mirrors the law of South Carolina. Under Arizona law, a foreclosure sale can be overturned by a showing of gross inadequacy of sale price or by inadequacy of sale price coupled with slight irregularities in the circumstances surrounding the sale. *Id.* at 207, 52 P.3d at 776. The court in *In re Krohn* notes that "where there is an inadequacy of price which in itself might not be grounds for setting aside the sale, slight additional circumstances or matters of equity may so justify. *Id.*

In Re Krohn addressed the stability of the "foreclosure industry" as well as the potential for discouraging bidders and creating a "chilled market." *Id.* at 210, 52 P.3d at 779. In response, the Supreme Court of Arizona states that "we have been presented with no data indicating that the traditional judicial foreclosure market has been disrupted by existing judicial oversight to prevent grossly inadequate prices, and such a result is not self-evident." *Id.*; See also *Ballentyne v. William Smith*, 205 U.S. 285, 291 (1907) (noting that the equities involved and the meager sale price outweigh the Court's concern for impairing the confidence in the stability of judicial sales). The opinion goes on to say that:

"Indeed, purchasers continue to come forward, making deed of trust purchases without certain knowledge that the trustee has fully complied with the statutory procedural obligations and thus take a risk that the sale may be set aside for that reason. For example, there was no apparent flight from deed of trust sales after we vacated such a sale when we found a ninety-day statutory notice of sale did not negate the additional thirty-day notice required in the deed of trust itself. *Schaeffer v. Chapman*, 176 Ariz. 326, 861 P.2d 611, (1993). Perhaps this is because most purchasers believe, as we do, that only the smallest minority of deed of trust sales are conducted without statutory compliance, just as we also believe that most purchasers will assume only the smallest number of deed of trust sales are concluded at a price that could shock the conscience of the court because of gross inadequacy. That said, we think it just as likely that the possibility of judicial oversight on the ground of gross inadequacy will result in higher prices. If so, we think this will serve rather than impair the public interest." *Krohn* at 211, 52 P.3d at 780.

The opinion concludes that if judicial oversight of foreclosure sales has any effect at all on the bidding market, then that effect would likely be to increase the sale prices reached at judicial sale, thereby promoting the public interest and promoting the actual purpose for which judicial sales are conducted. *Id.*; See *Looper v. Madison Guar. Sav. & Loan Ass'n*, 292 Ark. 225, 231, 729 S.W.2d 156, 159 (1987) (noting that "the law is such that inadequacy of price when so gross, need only be coupled with slight circumstances to justify setting aside the sale. This is a court of equity, and foreclosure is historically an equitable proceeding to protect the debtor."). There is no reason to assume that the concerns expressed for the bidding market of South Carolina judicial sales would be subject to any greater detriment as that of Arizona, and the Supreme Court of Arizona was not influenced in the slightest by this argument. The United States Supreme Court was likewise not persuaded by such a concern. *Ballentyne*, 205 U.S. at 291.

Appellants acknowledge that absent special circumstances, a sale to a bona fide purchaser should not be upset by the courts. *Krohn* at 211, 52 P.3d 52 P.3d at 780. However, "the status of bona fide purchaser by itself cannot insulate even a well meaning

purchaser innocent of wrongdoing when other circumstances are present." *Id.* Bidders are charged with the knowledge that *some* difficulty in dealings exists, or else a property would not be set for public auction. *Id.* The rule of caveat emptor applies, and purchasers at such sales have already assumed the risk that some unknown procedural error may arise. *Id.* "Such bidders can reasonably expect to get bargains because of the nature of foreclosure sales, but public policy and the courts should not endorse extraordinary bargains at the expense of already troubled debtors." *Id.* "Knowledgeable purchasers can reasonably evaluate the fair market value of a property to make an appropriate bid that is not grossly inadequate." *Id.*

Fair market value cannot be realistically expected at a foreclosure sale, the context of the proceeding itself inhibits it. *Id.* However, that does not excuse results that constitute gross inadequacy or even disproportionate prices coupled with very slight evidence of unfairness or irregularity. *Id.* at 213, 52 P.3d at 782.

Krohn, at its core, "is a case about inequity on the one hand and unjust enrichment on the other. When these factors are present, our court has been available to give relief so long as there is no statutory prohibition." *Id.* (citing *Sparks v. Douglas & Sparks Realty Co.*, 19 Ariz. 123, 129, 166 P. 285, 288 (1917)). The importance of the nature of the parties involved in a foreclosure sale and the repugnance for allowing excessive profits at the expense of the drastic misfortune of a debtor are described by the Supreme Court of Arizona in the following excerpts:

"There are, of course, those waiting for opportunities based on individual misfortune, and we believe this makes it even more important that courts of equity are open to assure debtors receive not only procedural but fundamental fairness. Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public

interest and do no more than legally enrich speculators." *Id.* at 210, 52 P.3d. at 779.

"[I]f the legislature believes that the doors of the courthouse should be closed and the courts forbidden to grant relief to those who are unjustly and inequitably deprived of their homes by speculators or others seeking windfall profits, it may say so. . . . [T]he dissent asserts that there is no question of unjust enrichment in the present case because the purchaser at the trustee's sale 'was not the lender, but a third party'. We are unable to understand the distinction. It makes little difference whether a lender or speculator was unjustly enriched. The important considerations are the questions of inequity on the one hand and unjust enrichment on the other. When these are present, the court may use its equitable powers." *Id.* at 214, 52 P.3d. at 783.

The Supreme Court of Arizona is not alone in its defense against the sanctioning of unjust enrichment. This is the same conclusion reached by the Supreme Court of Arkansas, wherein the Court argues that "it is not the purpose of the law to protect one who seeks to procure valuable property for little or no outlay." *Looper*, 292 at 233, 729 S.W.2d at 160. Collectively, the courts that have addressed "the nature of the parties" inquiry, as it pertains to setting aside of judicial sales and have concluded that the rights of a real estate speculator are far outweighed by the right of fundamental fairness owed to the debtor.

V. HISTORY SHOWS THE PRINCIPLES OF EQUITY ARE ESSENTIAL AND SHOULD ALWAYS BE OBSERVED IN FORECLOSURE MATTERS.

The maxims of equity cited by Appellants merely reinforce the public policy and history of our state in protecting property and the rights of owners. While foreclosure law has developed over the centuries to reflect the changing market and government oversight, two things have remained constant. One, the lender is entitled to repayment of the mortgage debt, but no more. The lender does not have a right to claim any surplus or equity in the property. See Robert Kratovil, Modern Mortgage Law and Practice, 32 (2d ed. 1981). Two, the owner's right to redeem their home equity is guarded.

Similarly, when the equity battle shifted to contracts for deed, installments sales contracts, equitable type mortgages, etc, the court developed a series of questions required to be examined to determine if the owner had no equity in the property which requires termination of contract; some equity which allows for a period to redeem or pay-off debt; or if sufficient equity, the ability to sell property just like a legal mortgage. *See* Andrew S. Radeker, Esq., Installment Land Sales Contracts, *Pleading Special Property Matters* (Master-in-Equity Bench Bar October 10, 2008) at pages 45-49.

Another example of policy reflecting equity protection occurs during a tax sale. A defaulting taxpayer has the right to right to redeem property from a third party bidder when it provides for a post tax sale time limit to allow the defaulting taxpayer to redeem property sold at tax sale. S.C. Code Ann. § 12-51-90, 100 (1976 as amended).

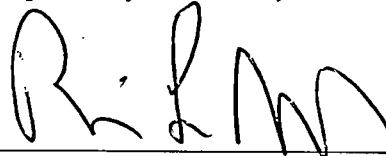
These examples represent our state's efforts to equitably address these issues in the battle between the owner/debtor and the lender/creditor. Now, the examination has shifted to a determination if the owner's equity should be protected from a stranger to the transaction, a third party bidder, in a sale subject to a senior lien.

The primary focus of the bid process is to pay off the plaintiff/creditor and protect equity in property so that in the event the third party bidder's bid generates surplus money, those funds representing the owner's equity would, by law, go first to the other entitled creditors, and then to the owner. South Carolina recognizes that the owner's equity, arguably at least to 10%, has a protected position in a first mortgage sale scenario as explained in the "shock the conscience" cases.

CONCLUSION

Based on the foregoing arguments and citation of authority, the Appellants, Devery A. Hale and Tina T. Hale, respectfully request that the order of the Master-in-Equity be reversed and sale vacated because the sale price shocks the conscience, and our courts should consistently utilize a single formula to determine bid price to value ratio.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. L. Boger', written over a horizontal line.

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February 3, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Hon. Joseph M. Strickland, Master-in-Equity

Case No. 2015-001807

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SC Court of Appeals

Winrose Homeowners' Association, Inc. and Regime Solutions, LLC..... Respondents,

v.

Devery A. Hale and Tina T. Hale..... Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

DOCKET NO. 2014-CP-40-00847

Winrose Homeowners' Association, Inc.

Plaintiff,

ORDER OF REFERENCE

v.

Devery A. Hale and Tina T. Hale,

Defendant(s).

008928/00015

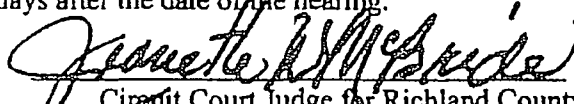
Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or the clerk of court.

IT IS HEREBY ORDERED, that this action is referred to the The Honorable Joseph M. Strickland, as Master in Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Master in Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee.

The hearing shall be held in the Office of The Honorable Joseph M. Strickland, Master in Equity for Richland County, located at:

Richland County Judicial Center
1701 Main Street
Courtroom 2D
Columbia, SC 29201

and the final order by the Master in Equity or Special Referee shall be filed with the Clerk of Court for Richland County not later than sixty (60) days after the date of the hearing.


Circuit Court Judge for Richland County or
Clerk of Court for Richland County

_____, South Carolina

24-2, 2014.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-40-00847

Winrose Homeowners' Association, Inc.

Devery A. Hale and Tina T. Hale

PLAINTIFF(S)

DEFENDANT(S)

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Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

TMS#: R05107-05-12

Property Address: 25 Caddis Creek Court

2014 JUL 21 AM 9:38
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master in Equity

297
Judge Code

7-15-14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 21 day of July, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Stephanie Trotter (SC Bar #77680)

McCabe, Trotter & Beverly, P.C.

PO Box 212069

Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

2014-CP-40-00847

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Winrose Homeowners' Association, Inc.

Plaintiff,

v.

Devery A. Hale and Tina T. Hale

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2014-CP-40-00847

JUDGMENT OF FORECLOSURE AND
Deficiency Judgment Waiver

RICHLAND COUNTY
FILED
JUL 21 AM 9:38
JENNIFER W. MCGIBBIE
CLERK, C.P. & G.S.

(008928/00015)

A hearing was held 06/30/2014. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on 02/11/2014.
1. The Summons and Complaint were filed on 02/11/2014.
2. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
3. The Defendant(s) are in default.
4. The Defendant(s) are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
5. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.
6. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.
7. On 04/24/1998 the Defendant(s) took title to the subject property located at 25 Caddis Creek Court. The Defendant(s), by taking title to the subject property agreed to the governing documents for Plaintiff, which are of record herein.
8. The titleholder(s) of record in and to the subject property as of the filing of the lis pendens in this action is/are Devery A. Hale and Tina T. Hale.
9. Payment of the assessment has not been made as provided for by the

Declaration, and the Plaintiff has elected to require immediate payment of the entire amount due thereon. Plaintiff has placed it in the hands of the attorney herein for collection by filing a Notice of Lien for unpaid assessments and initiating a foreclosure of that lien.

10. The sum of \$2025.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Declaration.

11. Specifically, the Plaintiff's attorney is entitled to \$375.00 for services performed in filing a Notice of Lien for delinquent assessments. This service required the Plaintiff's attorney to research public real property records to identify the subject property, research court records to determine if there are any pending actions against the subject property, prepare and coordinate filing and service of the Notice of Lien, coordinate any payoff requests or payment plans with the Defendant, and eventually satisfy the Notice of Lien upon payment by the Defendant.

12. Plaintiff's attorney is further entitled to the additional sum of \$1,650.00 for prosecuting the foreclosure action. This service required the Plaintiff's attorney to obtain and review a title abstract for the subject property, prepare and file a lis pendens, summons and complaint for foreclosure, arrange for personal service of the initial pleadings, review the file to determine whether service was properly achieved and whether the Defendant is in default, and prepare and file an Affidavit of Default when the Defendant failed to respond. The Plaintiff's attorney also had to prepare and file a proposed order of reference for this case. Once the court set a final hearing date, Plaintiff's attorney had to send notice to the Defendant at least ten days prior to the final hearing. Prior to this hearing, Plaintiff's attorney was responsible for drafting a proposed transcript of testimony, an affidavit of costs, an affidavit of attorney's fees, a certification that this case is not subject to Administrative Order 2011-5-02-01, a proposed order, and a proposed notice of sale. Upon execution of this Judgment, Plaintiff's attorney will be responsible for ensuring the foreclosure sale is properly advertised, bidding on her client's behalf at any foreclosure sale, and preparing post-sale documents if her client should be the highest bidder at the sale. If her client takes title to the property at the foreclosure sale, Plaintiff's attorney will also be responsible for prosecuting any eviction proceedings necessary to clear the property for Plaintiff's possession.

13. The sum of \$2025.00 is reasonable based on the time necessarily

devoted to representation of the Plaintiff during the several-month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case, also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and her experience in handling assessment lien foreclosure matters. The fees awarded herein are also reasonable since they are less than the fees customarily awarded by this court for similar services in this county. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional circumstances delaying conclusion beyond the normal time.

14. After all payments received by the Plaintiff have been credited, the amount due and owing with interest at the rate provided in the Declaration, and other costs and expenses of the within action, including an attorney's fee, secured by the Declaration, is as follows:

(a)	Principal due.....	\$500.00
(b)	Interest from 01/01/2011 through June 19, 2014 at 8.0000% per annum	\$80.87
(c)	Late Fees and Other Charges	\$0.00
(d)	Costs of collection prior to hearing (service, filing, etc.).....	\$542.80
(e)	Attorney's fee	\$2025.00
(f)	Payments	(\$250.00)
	+	
	TOTAL debt secured by the Declaration, including interest to date shown.....	\$2898.67

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 8.0000% per annum (pursuant to the terms of the Declaration) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Declaration through the date to which such interest is computed.

15. Plaintiff is seeking the usual foreclosure of the property and has expressly waived the right to a personal or deficiency judgment.

IT IS THEREFORE ORDERED THAT:

1. There is due the sum of \$2898.67, as set out in the Findings of Fact *supra*, together with interest at the rate provided herein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective Declaration rate per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

3. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit.

4. The Defendant is liable for the aforesaid judgment debt including interest at the rate of 8.0000% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

5. On default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction, at the Richland County Courthouse, in the City of Columbia, County and State aforesaid on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

a. For cash: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 8.0000%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

Specifically, this sale is subject to a senior mortgage held by Nationsbank Mortgage Corporation recorded in Book R64 at Page 617..

d. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

6. The bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

8. The Master in Equity will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

9. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

10. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

11. The Defendant named herein, and all persons whosoever claiming under Defendant, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said premises so sold, or any part thereof.

12. In accordance with Rule 77(d), SCRCP, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

13. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

14. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

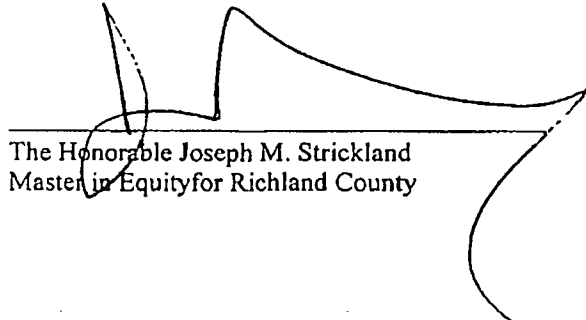
15. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 148 on a plat of WINROSE - PHASE TWO prepared by Belter & Associates, Inc. dated September 17, 1997 and recorded in the Office of the RMC for Richland County in Plat Book 57 at page 1055. This property being more particularly shown on plat prepared for Devery A. Hale and Tina T. Hale by Cox and Dinkins, Inc. dated April 16, 1998; said property having such sizes, shapes, dimensions, buttings and boundings as will be shown by reference to the aforesaid plat.

This being the same property to given to Devery A. Hale and Tina T. Hale by deed of Mark S. Kovacs d/b/a Style Homes dated 04/24/1998 and recorded in the Richland County Register of Deeds Office on 05/06/1998 in Book 64 at Page 615.

Property Address: 25 Caddis Creek Court

TMS: R05107-05-12


The Honorable Joseph M. Strickland
Master in Equity for Richland County

July 15, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Winrose Homeowners' Association, Inc.

Plaintiff

vs.

Devery A. Hale and Tina T. Hale

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

**ORDER ON DEFENDANT'S
MOTION TO VACATE SALE**

C/A No. 2014-CP-40-0842

2015 APR 21 AM 7:42
FILED
RICHLAND COUNTY
CLERK OF COURT
STEPHANIE W. TROTTER
C.P. & G.S.

THIS MATTER came before me on February 6, 2015 on Defendants, Devery and Tina Hale's, Motion to Vacate Sale for Inadequacy of Bid. Present at the hearing were Eric C. Hale, attorney for the successful bidder at the foreclosure sale herein, Regime Solutions, LLC, and Brian Boger, attorney for Defendants. Also present at the hearing was Stephanie Trotter, attorney for Plaintiff.

This is an action arising from the foreclosure of a homeowner's association lien. The property located at 25 Caddis Creek Court Irmo, South Carolina 29063 was foreclosed on due to a homeowner's association lien and sold at judicial sale on August 4, 2014 subject to any and all valid senior encumbrances on the property, including but not limited to a recorded mortgage on the subject property in the Richland County ROD at Book R 64, Page 617 and in the amount of \$99,037.00. The winning bidder, Regime Solutions, paid the bid price of \$3,036.00 into the court. This Court issued a Master's Deed to Regime Solutions which was filed on August 22, 2014 in the Richland County ROD in Book 1968, Page 266. Thereafter Regime Solutions sought to be put in possession of the property and filed a Rule to Show Cause on September 16, 2014. Defendants' Motion to Vacate Sale followed and was considered in advance of ruling on Regime Solutions' Rule to Show Cause as the outcome of Defendants' motion was controlling over Regime Solutions' motion. Defendants' Motion to Vacate Sale asks this court to rule that the sale price "shocks the conscience" and to accordingly set aside the sale due to the inadequacy of the bid. It is undisputed that Regime Solutions purchased the property subject to the

aforementioned senior mortgage. Additionally, Defendants offered competent evidence that the principal balance presently owing on said mortgage is \$66,004.00. It is also undisputed that the present fair market value of the subject property is estimated to be approximately \$128,000.

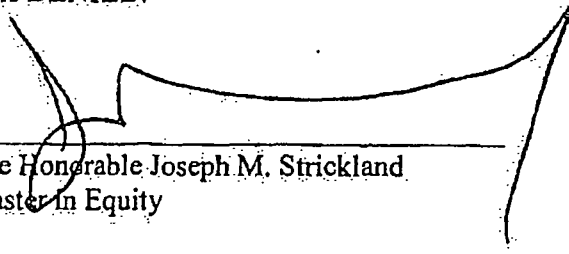
After consideration of the motions, filings, and arguments of the respective parties, this Court concludes as follows:

Defendants argue that the bid price of \$3,036 shocks the conscience due to the South Carolina Court of Appeals' observation that "South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's actual value, have our courts consistently held the discrepancy to shock the conscience of the court. *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007). The defendants calculate the bid price as constituting only 2.37% of the value of the subject property. However, this Court declines to adopt the calculation advanced by Defendants and instead adopts the calculation of the bid amount in the fashion set forth in the South Carolina Supreme Court case *Arrow Bonding Company v. Warren* 399 S.C. 603, 732 S.E.2d 622, 623 (2002).

Accordingly, the appropriate measure of the effective sales price is the bid amount, \$3,036, plus the encumbrances against the property, \$66,004 according to the evidence offered by Defendants, for a total effective sale price of \$69,040. This effective sales price is then divided by the value of the property, \$128,000, to calculate a percentage of the property value, 54% of estimated fair market value. This is far and above what South Carolina courts have routinely considered shocking to the conscience and therefore I conclude that the bid of Regime Solutions is not grossly inadequate or shocking to the conscience and the sale should not be set aside. In so concluding the Court has also considered that the practice of homeowners' association foreclosures would effectively be eradicated if the defendants' position came to bear. Virtually no foreclosures of this type would pass scrutiny if encumbrances and liens are not considered when calculating the appropriateness of a bid amount.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

that Defendants' Motion to Vacate Sale is **DENIED**.



The Honorable Joseph M. Strickland
Master in Equity

Dated: April 13, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Winrose Homeowners' Association, Inc.

Plaintiff

vs.

Devery A. Hale and Tina T. Hale

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

**ORDER ON DEFENDANT'S
MOTION TO VACATE SALE**

C/A No. 2014-CP-40-0847

The undersigned hereby certifies that on July 30, 2015, he served a copy to all counsel in this action with a copy of the document(s) listed below and this Certificate of Mailing in the above-referenced matter by depositing a copy in the United States Mail, postage prepaid, and addressed as follows:

DOCUMENT(S):

Order on Defendant's Motion to Vacate
Sale

PARTIES SERVED:

Brian Boger, Esq.
1331 Elmwood Drive. #210
Columbia, SC 29201



Elias Fain

Dated: July 30, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
DOCKET NO.

Winrose Homeowners' Association, Inc. ,

Plaintiff,

COMPLAINT
(NON-JURY)
FORECLOSURE OF REAL ESTATE
NON-ELIGIBLE FOR HOME
MODIFICATION PROGRAM

v.

Devery A. Hale and Tina T. Hale,

Defendant(s).

FILED
FEB 11 AM 9:05
CLERK OF COURT
J. W. McBRIDE
C.C.P. & G.S.

The Plaintiff herein, complaining of the acts or omissions of the Defendant(s) would show unto this Honorable Court as follows:

1. Upon information and belief, the Defendant(s) is/are a resident of the County of Richland, State of South Carolina and the subject of this action is real property located in the County of Richland, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and has the right to bring this action.
3. Heretofore, on or about 04/24/1998 the Defendant(s) took possession of the property described in Exhibit A attached to this Complaint and incorporated herein by reference.
4. The herein described property is subject to governing documents for Winrose Homeowners' Association, Inc. attached hereto as Exhibit B and incorporated herein by reference.
5. By taking possession of the property, Defendant(s) agreed to pay assessments and other charges allowed by the governing documents.
6. Pursuant to the governing documents a lien arises in favor of Plaintiff to secure payment of the unpaid charges.
7. Heretofore, on or about 04/06/2011, Plaintiff filed a Notice of Lien in connection with unpaid assessments on the herein referenced property owned by the Defendant(s).
8. Pursuant to the governing documents Plaintiff is entitled to foreclose on the aforementioned lien.
9. The Defendant(s) has failed to make consistent payments of the assessments and interest, although demand for payment has been made, and the Plaintiff after giving all required notices, has and does hereby elect to declare the entire balance payable at once. There is now due, owing and unpaid the

sum of \$566.41 in principal, late fees, interest and other charges. Plaintiff is further entitled to recover reasonable attorney's fees and the cost of litigating this proceeding.

10. If Plaintiff secures the premises being foreclosed herein, Plaintiff's cost of securing said premises should be added to any judgment rendered on its behalf. If Plaintiff pays any utility charges constituting a lien on said premises, Plaintiff's advances should be added to any judgment rendered on its behalf.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein:

1. Under the direction of this Court, ascertain and determine the amount due to Plaintiff as outlined by the governing documents, together with interest of 8.00% Per annum and reasonable attorney's fees and costs as outlined in the governing documents.

2. That said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and for the costs of this proceeding.

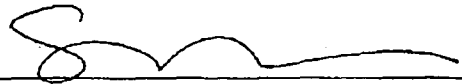
3. That the premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

- a. First, to the costs and expenses of the within proceeding and said sale;
- b. Second, to the payment and discharge of the amount due under the governing documents, together with attorney's fees as aforesaid; and
- c. Third, the surplus, if any, be distributed pursuant to Rule 71, of the South Carolina Rules of Civil Procedure.

4. Plaintiff have judgment against the Defendant(s) for the full amount found to be due Plaintiff.

5. For such other and further relief as may be just and proper.

MCCABE, TROTTER & BEVERLY, P.C.



Stephanie C. Trotter
140 Stoneridge Drive, Suite 650
Post Office Box 212069 (29221)
Columbia, SC 29210
Phone: 803-724-5000
Fax: 803-724-5001
Email: Stephanie.Trotter@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
February 7, 2014

Affidavit of Service

File No: 008928/00015

State of South Carolina
In the Court: Common Pleas

County of: RICHLAND
Docket Number: 2014-CP-40-00847

Plaintiff: WINROSE HOMEOWNERS' ASSOCIATION, INC.
VS
Defendant: DEVERY A. HALE

Service of Process on: DEVERY A. HALE
Address of Service: 25 CADDIS CREEK COURT, IRMO, SC 29063
Date and Time of Service: 2-14-2014 AT 3:40 PM

Documents Served: LIS PENDENS, CIVIL ACTION COVERSHEET, SUMMONS AND COMPLAINT

Person Served: A true and correct copy of the papers was served on the name party in the following manner,

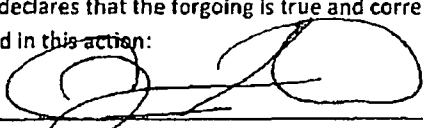
 Personally – By delivering a copy to the person to be served:

XX Substitute – By leaving a copy at his/her place of abode with some person of suitable age and discretion
residing therein: TINA T. HALE - WIFE

Description (approx.) of Person receiving documents:

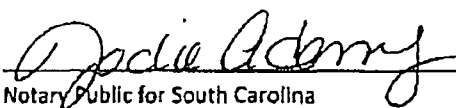
Sex: F Skin Color: W Age: 37 Height: 5' 5" Weight: 150 Hair: SHORT BLONDE

Process Server: Undersigned declares that the forgoing is true and correct and that the deponent is over the age of 18 and
is not a party to nor interested in this action:

Signature of Process Server: 

Name of Process Server: Craig Adams,

Sworn to before me this 14 Day of February, 2014


Notary Public for South Carolina

Commission Expiration: 1-29-2023

RICHLAND COUNTY
FILED
2014 FEB 24 PM 3:29
JEANETTE L. MORRIS
C.C.P. & G.S.

Affidavit of Service

File No: 008928/00015

State of South Carolina
In the Court: Common Pleas

County of: RICHLAND
Docket Number: 2014-CP-40-00847

Plaintiff: WINROSE HOMEOWNERS' ASSOCIATION, INC.
VS
Defendant: TINA T. HALE

Service of Process on: TINA T. HALE
Address of Service: 25 CADDIS CREEK COURT, IRMO, SC 29063
Date and Time of Service: 2-14-2014 AT 3:40 PM

Documents Served: LIS PENDENS, CIVIL ACTION COVERSHEET, SUMMONS AND COMPLAINT

Person Served: A true and correct copy of the papers was served on the name party in the following manner,

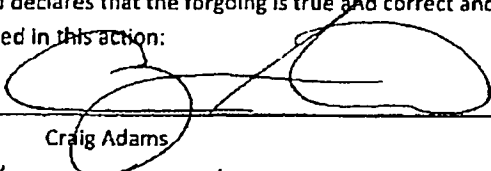
XX Personally – By delivering a copy to the person to be served:
TINA T. HALE

 Substitute – By leaving a copy at his/her place of abode with some person of suitable age and discretion
residing therein:

Description (approx.) of Person receiving documents:

Sex: F Skin Color: W Age: 37 Height: 5' 5" Weight: 150 Hair: SHORT BLONDE

Process Server: Undersigned declares that the foregoing is true and correct and that the deponent is over the age of 18 and
is not a party to nor interested in this action:

Signature of Process Server: 

Name of Process Server: Craig Adams

Sworn to before me this 14 Day of February 2014


Notary Public for South Carolina

Commission Expiration: 1-29-2023

RICHLAND COUNTY
FILED
2014 FEB 24 PM 3:29
JEANETTE M. MCENIDY
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

DOCKET NO. 2014-CP-40-00847

Winrose Homeowners' Association, Inc.
Plaintiff,

**AFFIDAVIT OF DEFAULT AND NON-
MILITARY SERVICE**

v.

Devery A. Hale and Tina T. Hale,
Defendant(s).

008928/00015

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and says that she/he is one of the attorneys for Plaintiff in the above-entitled action and that more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant(s) and that no Answer or Notice of Appearance has been served on Plaintiff's attorney as required by the Summons by the Defendant(s) Devery A. Hale and Tina T. Hale. Therefore, the Defendant(s) Devery A. Hale and Tina T. Hale is/are in default.

Further, that she/he has investigated the occupational status of Devery A. Hale and Tina T. Hale and they are not in the Military Service of the United States as contemplated by the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq.

S. Trotter

Stephanie C. Trotter
McCabe Trotter & Beverly, PC
P. O. Box 212069
Columbia, SC 29221
Telephone: 803-724-5002
Fax: 803-724-5001
Email: Stephanie.trotter@mccabetrotter.com
Attorneys for Plaintiff

March 28, 2014
Columbia, South Carolina

Sworn to before me this 28 day of
March, 2014.

Virginia Orr
Notary Public for South Carolina
My Commission Expires: 2/19/23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Winrose Homeowners' Association,
Inc.

Plaintiff

vs.

Devery A. Hale and Tina T. Hale

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

MOTION FOR RULE TO SHOW CAUSE

C/A No. 2014-CP-40-0847

RICHLAND COUNTY
FILED
2014 SEP 16 AM 10:08
JEANNETTE W. HERRING
C.C.P. & G.S.

Regime Solutions, LLC would respectfully show unto this Honorable Court:

1. The above-described successfully completed a foreclosure of an unpaid assessment lien against the Defendant(s) affecting the following property:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 148 on a plat of WINROSE - PHASE TWO prepared by Belter & Associates, Inc. dated September 17, 1997 and recorded in the Office of the RMC for Richland County in Plat Book 57 at page 1055. This property being more particularly shown on plat prepared for Devery A. Hale and Tina T. Hale by Cox and Dinkins, Inc. dated April 16, 1998; said property having such sizes, shapes, dimensions, buttings and boundings as will be shown by reference to the aforesaid plat.

This being the same property to given to Devery A. Hale and Tina T. Hale by deed of Mark S. Kovacs d/b/a Style Homes dated 04/24/1998 and recorded in the Richland County Register of Deeds Office on 05/06/1988 in Book 64 at Page 615.

Property Address: 25 Caddis Creek Court
TMS# R05107-05-12

2. A Judgment of Foreclosure and Sale was issued by this Court and the subject property was sold at public auction in accordance therewith on August 4, 2014. The successful bidder at the public auction was Regime Solutions, LLC.

3. The proceedings in regard to the foreclosure action are preserved in the Office of the ROD for Richland County.

4. The Defendant(s) or others claiming through the Defendant(s) still occupy and have within the property certain items of personal property which they have failed and refused to remove from the property although they have been given notice that the property is now owned by Regime Solutions, LLC.

5. Regime Solutions, LLC is entitled to possession of the property as the successful bidder at the said sale in accordance with the Judgment of Foreclosure and Sale:

In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Richland County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and, to keep said successful bidder or his assigns in such peaceable possession.

6. Regime Solutions, LLC is entitled to a Writ of Assistance to remove the said Defendant(s), together with any and all persons claiming under them, and all the personal property from the subject property, and to put the Plaintiff in possession thereof.

7. Where the terms "premises" or "property" are used herein, they shall mean the subject real estate and the improvements thereon, including fixtures. Personal property shall mean personal effects such as furniture or clothing.

WHEREFORE, Regime Solutions, LLC prays that this Court issue its Rule To Show Cause, requiring the Defendant(s) and/or occupants together with any and all persons claiming under them, to show cause why a Writ of Assistance should not be issued to the Sheriff of Richland County for the removal of said Defendant(s) and/or occupants or any persons claiming under them, and all personal property on the subject property, including manufactured housing or similar personal property.

LAW OFFICE OF ERIC C. HALE, LLC



Eric C. Hale, S.C. Bar # 71768
Elias Fain, S.C. Bar #101193
Post Office Box 1605
Irmo, SC 29063
(803) 250-5252 (Tel)
(866) 543-3040 (Fax)

Dated: August 27, 2014
Richland, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Winrose Homeowners' Association,
Inc.

Plaintiff

vs.

Devery A. Hale and Tina T. Hale

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

RULE TO SHOW CAUSE

C/A No. 2014-CP-40-0847

RICHLAND COUNTY
FILED
2014 SEP 16 AM 10:08
JEANNETTE W. MOORE
C.C.P. & G.S.

**TO THE OCCUPANTS OF THE PROPERTY MORE FULLY DESCRIBED IN
PARAGRAPH ONE (1) OF THE MOTION:**

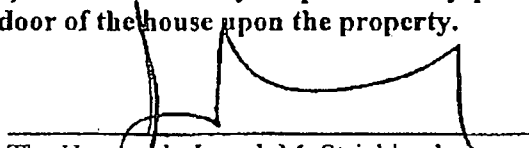
UPON reading and filing of the within Motion of Elias Fain, attorney for Regime Solutions, LLC, the successful bidder at the foreclosure sale, YOU ARE ORDERED to show cause, if any you can, before the undersigned:

The Honorable Joseph M. Strickland
Courtroom 2-D
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201

on the 14th day of November, 2014, at 11 o'clock A.M.,

as to why a Writ of Assistance should not be issued to the Sheriff of Richland County, South Carolina ordering and directing him to remove you peaceably or by force, together with any and all persons claiming under you and all personal property located within or on the property located at: 25 Caddis Creek Court

Service of this Rule and Motion to Show Cause can be served on the above person by any means allowable under 4(d) SCRCP and may be perfected by posting the Motion and Rule to Show Cause upon the door of the house upon the property.


The Honorable Joseph M. Strickland
Master in Equity

Richland, South Carolina

Dated: Sept. 15, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Winrose Homeowners' Association, Inc.
vs.

Devery A. Hale and Tina T. Hale
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-0847

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Elias Fain</u> , Bar No. <u>101193</u> Address: <u>125 Executive Pointe Blvd</u> <u>Columbia, SC 29210</u> Phone: <u>803-250-5252</u> Fax _____ E-mail: <u>elias@erichalelaw.com</u> Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)		2014 SEP 16 AM 10:08 JEANNETTE W. J. S. SRIOT C.C.P. & G.S. RICHLAND COUNTY FILED	
SECTION I: Hearing Information Nature of Motion: <u>Rule to Show Cause</u> Estimated Time Needed: <u>15</u> Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant <u>8/27/14</u> Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25 _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
Collected by: <u>nrh/s</u> ✓ Date Filed: <u>9/16/14</u> ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____ CLERK'S VERIFICATION			

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
JR Number 2014-CP-40-0847

Winrose Homeowners' Association, Inc.,

Plaintiff(s),

vs.

Devery A. Hale and Tina T. Hale,

Defendant(s).

Master's Report on Sale and Disbursements
and
Order of Confirmation
Pursuant to Rule 71, SCRCPP
(Public Sale)

2014 OCT 17 PM 1:20

1. Pursuant to Order of Court and after due notice and advertisement, I sold subject property to:
 - (a) the Plaintiff for the sum of \$ _____, that amount being the highest bid made on Sales Day, August 4, 2014. The Plaintiff thereafter paid only the costs as provided in said Order and became the grantee/assigned its bid to _____.
 - (b) the highest bidder on Sales Day, Regime Solution, for the sum of \$ 3,036.00. The successful bidder thereafter complied with the bid, as provided for in said Order, and became the grantee/ assigned the bid to _____.
2. That I have executed and delivered to said grantee a good and sufficient deed of conveyance of said property.
3. I have received and disbursed the costs as set out on the attached Statement of Disbursements which resulted in the disbursement of proceeds of sale/a surplus of \$ _____, notice of which is being sent to all parties who may wish to apply for said surplus, pursuant to Rule 71(c), SCRCPP.

IS THEREFORE ORDERED that the said sale and the Master's Report on Sale and Disbursements are hereby confirmed as a judgment of this Court.

Sept. 24, 2014

JOSEPH M. STRICKLAND
Master in Equity for Richland County

**MASTER IN EQUITY
STATEMENT OF DISBURSEMENTS**

JR#

8/13/14

C.A.# 2014-CP-40-0847

Winrose vs. Devery A. Hale, et al.		Disbursements	Receipts
AMOUNT OF BID \$3,036.00			
Reference Fee			\$125.00
5% of Bid			\$151.80
Balance of Costs			\$2,890.14
Clerk			
Master's Agent			
Advertising Sale			
Master's costs - R. C. Treasurer		\$155.36	
Court Reporter			
Revenue Stamps, State			
Revenue Stamps, County			
Guardian ad Litem Fee			
Fee of Attorney Under Order of Court (Military Service)			
Recording Deed			
Taxes - State and County			
Attorney's Disbursement and/or Fee			
Total Debt	\$2,898.67		
Interest on Principal from			
6/20/14 thru 7/15/14	\$2.70		
Interest on Total Judgment plus			
Interest on Principal from			
7/16/14 to 8/13/14	\$17.64		
Additional Costs			
	\$382.50		
Total Due			
	\$3,301.51		
Amount available for credit due McCabe Trotter & Beverly			
Attorneys for Winrose, \$3,011.58.		\$3,011.58	
Total Costs		\$3,166.94	
Surplus Funds			
TOTALS		\$3,166.94	\$3,166.94

SUSAN GOLSTON

From: Melody Baird <Melody.Baird@mccabetrotter.com>
Sent: Wednesday, September 17, 2014 3:07 PM
To: SUSAN GOLSTON
Subject: Advertising Costs
Attachments: Invoice Sales.PDF

Good Afternoon Susan,

Per our conversation, I've attached the advertising costs Invoice we received from The Columbia Star for your requested cases. I've also typed them out below for you. Please let me know if you need anything else.

2013-CP-40-04658 Gatewood v. Daniel Busenbark -- \$367.50
2014-CP-40-00847 Winrose v. Devery Hale -- \$382.50
2013-CP-40-04567 Lake Carolina v. James Keels -- \$375.00
2014-CP-40-00123 The Rabon Farms v. McFadden -- \$397.50
2013-CP-40-07847 Jacob's Creek v. Jimmy Oates -- \$375.00
2011-CP-40-08348 Lexington Green v. Kathie Sherrill -- \$450.00

Thanks!
Melody

Melody D. Baird
HOA Foreclosure Paralegal
McCabe, Trotter & Beverly, PC
140 Stoneridge Drive, Suite 650 (29210)
PO Box 212069
Columbia, SC 29221
Phone: (803) 724-5000
Fax: (803) 724-5001
Direct: (803) 724-5014



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

NOTICES

PRIVILEGED AND CONFIDENTIAL: This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at 803-724-5000 or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-40-0847

Winrose Homeowners' Assoc., Inc.,)

Plaintiff(s),)

Vs.)

Devery A. Hale, et al.,)

Defendant(s).)

CERTIFICATE OF MAILING

I, the undersigned, a member of the Staff of the Office of the Richland County Master in Equity, do here by certify that the original:

- ☒ Master's Order on Sale & Disbursements with Statement Attached
☐ Master's Final Order
☐ Master's Report
☐ Order Confirming Master's Report
☐ Order of Dismissal
☐ Order of Dismissal in Supplementary Proceedings BEFORE Exam.
☐ Order of Dismissal in Supplementary Proceedings AFTER Exam.
☐ No Assets Available to apply toward debt
☐ Unable to Serve Defendant
☐ Judgement has been satisfied
☐ Provisions have been made to satisfy Judgment
☐ Defendant has filed Bankruptcy
☐ Order Confirming Agreement in Supplementary
Other:

Dated _____ was filed in the office of the Clerk of Court for Richland County on _____ and copies of the same, together with a check in the amount of \$ _____ made payable to _____ were/was mailed by U.S. Mail, postage paid/hand-delivered/placed in Attorney's Box in the Clerk's Office to the following Counsel/s of record at their Office Address and the following parties:

McCabe Trotter Esquire

Esquire

_____, 2014

DATED AT COLUMBIA, SOUTH CAROLINA

MASTER IN EQUITY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A # 2014-CP-40-00847
	)	
Winrose Homeowners' Association,	)	
Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO VACATE SALE
	)	
Devery A. Hale and Tina T. Hale,	)	
	)	
Defendants.	)	

2014 NOV -4 PM 1:31
 RICHLAND COUNTY
 FILED
 JEANNETTE W. McBRIDE
 C.C.P. & G.S.

TO: ERIC C. HALE, ESQ., ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE, that Devery A. Hale and Tina T. Hale, "Defendants," will move before the Honorable Joseph M. Strickland, Master in Equity for Richland County, ten (10) days after service hereof, or as soon thereafter as may be heard, for an Order of Relief from Judicial Sale based on South Carolina Rules of Civil Procedure Rule 60(b)(5).

FACTS

Defendants Devery and Tina Hale have owned the property, located at 25 Caddis Creek Court, Irmo, South Carolina, since they executed the note and mortgage in 1998 for \$104,250. They got behind on their dues to the Winrose Homeowners' Association, and the Homeowners' Association filed an action for foreclosure on February 24, 2014. The property is currently worth \$128,000. (Exhibit 1). It was sold at public sale for \$3,036.00 on August 4, 2014.

STANDARD

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding [in the case of] mistake, inadvertence, surprise, or excusable neglect . . . fraud, misrepresentation, or other misconduct of an adverse party;

[or if] it is no longer equitable that the judgement should have prospective application.” Rule 60(b)(5) SCRCP. “The determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court.” *Investors Sav. Bank v. Phelps*, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (Ct. App. 1990). “An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions.” *Carson v. CSX Trans., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (Ct. App. 2012).

ARGUMENT

Defendants Devery Hale and Tina Hale owned property located at 25 Caddis Creek Court. The public sale price for the property in the instant case was \$3,036. The note and mortgage executed in 1998 for the property was for \$104,250, and the property is worth \$128,000 as of October 31, 2014. (Exhibit 1). The sale price for this property is 2.37% of its current value, and 2.91% of the value of the note and mortgage.

A judicial sale will be set aside “when either: (1) the sale price ‘is so gross as to shock the conscience’ or (2) the sale ‘is accompanied by other circumstances warranting the interference of the court.’” *Wells Fargo Bank, NA. v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 425 (Ct. App. 2008)(citing *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1934)). Courts in South Carolina have been setting aside judicial sales based on “grossly inadequate” sales prices. *Id.* 378 at 151, 662 S.E.2d at 425. South Carolina courts “have consistently held that when foreclosure sales prices amount to less than ten percent of the actual value of the property, the discrepancy shocks the conscience of the court.” *Bloody Point Property Owners Ass’n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729, 734 (Ct. App. 2014).

In *Wells Fargo Bank, NA. v. Turner*, the South Carolina Court of Appeals decided that

evidence of a foreclosed note and mortgage for \$82,025 and a sale of \$3,000, shocked the conscience of the court. 378 S.C. 147, 662 S.E.2d 424. The bid was 3.65% of the original principal amount of the foreclosed note and mortgage. The bid for Defendants' home was \$3,036, a mere 2.91% of the value of the note and mortgage. In the *Turner* case, the court ruled that evidence of the foreclosed note and mortgage was sufficient evidence for the court to decide that the amount of the sale shocked the conscience of the court. The bid in the instant case is 2.91%, which is less than the 3.65% deemed to be grossly inadequate in the *Turner* case, and much less than 10%, a value that courts often consider to be grossly inadequate. *See id.*; *see also Bloody Point Property Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014). Therefore, the bid in the instant case is grossly inadequate and the judicial sale should be set aside because it shocks the conscience.

Section 15-39-870 of the South Carolina Code states that,

[u]pon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.

S.C. Code Ann. § 15-39-870 (2005). Although evidence of a bona fide purchaser for value should be considered when discussing whether to vacate a sale, it is not an issue in the instant motion. When deciding whether a sale should be vacated for the reason that the sale price is unjust, the court should look to whether the sales price amounts to less than ten percent of the actual value of the property. *See Bloody Point Property Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014). Even if Plaintiff is deemed to be a bona fide purchaser, the execution of a sale for 2.91% of its note and mortgage, and 2.37% of its current value shocks the conscience of the court and should be vacated.

CONCLUSION

The public sale price is grossly inadequate and is so gross that it shocks the conscience.
Therefore, there is sufficient evidence to set aside judicial sale due to the inadequacy of the bid.

LAW OFFICES OF BRIAN L. BOGER

A handwritten signature in black ink, appearing to read 'B. L. Boger', written over a horizontal line.

Brian L. Boger

Phillip A. Curiale

Attorneys for Defendants

1331 Elmwood Ave, Suite 210

Columbia, SC 29201

Phone: 803-252-2880

Fax: 803-254-5025

November 4, 2014
Columbia, SC

EXHIBIT 1

Contract Price \$ 0 Date of Contract Is the property seller the owner of public record? ☐ Yes ☒ No Data Source(s) Richland Cty Tax Re

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☒ No

If Yes, report the total dollar amount and describe the items to be paid.

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics				One-Unit Housing Trends				One-Unit Housing		Percent Land Use %	
Location	☐ Urban	☒ Suburban	☐ Rural	Property Values	☐ Increasing	☒ Stable	☐ Declining	PRICE	AGE	One-Unit	55 %
Built-Up	☒ Over 75%	☐ 25-75%	☐ Under 25%	Demand/Supply	☐ Shortage	☒ In Balance	☐ Over Supply	\$ (000)	(yrs)	2-4 Unit	10 %
Growth	☐ Rapid	☒ Stable	☐ Slow	Marketing Time	☐ Under 3 mths	☒ 3-6 mths	☐ Over 6 mths	105 Low	0	Multi-Family	5 %
Neighborhood Boundaries NORTH BY HOLLINGSWORTH RD. EAST BY LOST CREEK								130 High	50	Commercial	10 %
RD. SOUTH BY BROAD RIVER RD. WEST BY I-26								115 Pred.	25	Other	20 %
Neighborhood Description The subject neighborhood is located within reasonable proximity to shopping, houses of worship, schools, employment centers, and recreational facilities. Location is 15 miles north of the Central Business District of the City of Columbia, SC.											
Market Conditions (including support for the above conclusions) I HAVE CONSIDERED RELEVANT COMPETITIVE LISTINGS AND OR CONTRACT OFFERINGS IN THE PERFORMANCE OF THIS APPRAISAL AND THE TRENDING INFORMATION REPORTED IN THIS SECTION. * "OTHER" PERCENT LAND USE IS VACANT LAND.											
Dimensions 37.1X150.3X142.9X142.9				Area 12358 sf		Shape GEN RECTANG.		View N:Res;Res			
Specific Zoning Classification RS-1 Residential				Zoning Description Single Family Residential							
Zoning Compliance ☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)											
Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe											
SINGLE FAMILY RESIDENTIAL.											
Utilities Public Other (describe)				Public Other (describe)				Off-site improvements—Type Public Private			
Electricity ☒ Water ☒				Street Asphalt/pub ☒							
Gas ☒ Sanitary Sewer ☒				Alley NONE ☐							
FEMA Special Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone X				FEMA Map # 4501700040 H				FEMA Map Date 07/17/1995			
Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe											
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe											
SITE IS TYPICAL IN SIZE; TOPOGRAPHY IS AVERAGE FOR THE SUBDIVISION; NO ADVERSE EASEMENTS OR ENCROACHMENTS NOTED THAT ADVERSELY AFFECT VALUE OR MARKETABILITY.											
Source(s) Used for Physical Characteristics of Property ☒ Appraisal Files ☒ MLS ☒ Assessment and Tax Records ☐ Prior Inspection ☐ Property Owner											
☒ Other (describe) Inspection from street (10/31/14) Data Source(s) for Gross Living Area 1561											
General Description		General Description		Heating/Cooling		Amenities		Car Storage			
Units ☒ One ☐ One with Accessory Unit	☐ Concrete Slab ☒ Crawl Space	☒ FWA ☐ HWBB	☒ Fireplace(s) # 1	☐ None							
# of Stories 1.5	☐ Full Basement ☐ Finished	☐ Radiant	☐ Woodstove(s) # 0	☒ Driveway # of Cars 2							
Type ☒ Det. ☐ Att. ☐ S-Det./End Unit	☐ Partial Basement ☐ Finished	☐ Other	☒ Patio/Deck deck	Driveway Surface Concrete							
☒ Existing ☐ Proposed ☐ Under Const.	Exterior Walls Vinyl/Avg	Fuel ELEC	☒ Porch front	☒ Garage # of Cars 2							
Design (Style) Traditional	Roof Surface Composition/avg	☒ Central Air Conditioning	☒ Pool unknown	Capert # of Cars 0							
Year Built 1998	Gutters & Downspouts none	☐ Individual	☒ Fence wood	☒ Attached ☐ Detached							
Effective Age (Yrs) 6	Window Type Vinyl/S.H. Avg	☐ Other	☐ Other none	☐ Built-in							
Appliances Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☐ Microwave ☐ Washer/Dryer ☒ Other (describe) vent fan											
Finished area above grade contains: 6 Rooms 3 Bedrooms 2.0 Bath(s) 1,561 Square Feet of Gross Living Area Above Grade											
Additional features (special energy efficient items, etc.) Subject meets 1993 Building Efficiency Standards Act guidelines.											

LOCATION	IN: RES: RES			IN: RES: RES			IN: RES: RES			IN: RES: RES		
Leasehold/Fee Simple	Fee Simple			Fee Simple			Fee Simple			Fee Simple		
Site	12358 sf			8250 sf			08200 sf			09745 sf		
View	N:Res:Res			N:Res:Res			N:Res:Res			N:Res:Res		
Design (Style)	DT1.5;Traditional			DT1;Traditional			0DT1;Traditional			0DT1;Traditional		
Quality of Construction	Q3			Q3			Q3			Q3		
Actual Age	16			15			015			019		
Condition	C3			C3			C4			+5,500 C4		
Above Grade	Total	Bdms.	Baths	Total	Bdms.	Baths	Total	Bdms.	Baths	Total	Bdms.	Baths
Room Count	6	3	2.0	6	3	2.0	6	3	2.0	6	3	2.0
Gross Living Area	1,561 sq. ft.			1,307 sq. ft.			+5,080 1,210 sq. ft.			+7,020 1,364 sq. ft.		
Basement & Finished Rooms Below Grade	0sf 0rr0br0.0ba0o			0sf 0rr0br0.0ba0o			0sf 0rr0br0.0ba0o			0sf 0rr0br0.0ba0o		
Functional Utility	Average			Average			Average			Average		
Heating/Cooling	Fwa/Central			Fwa/Central			Fwa/Central			Fwa/Central		
Energy Efficient Items	Insl/Insl Wind			Insl/Insl Wind			Insl/Insl Wind			Insl/Insl Wind		
Garage/Carport	2ga2dw			2dw			+5,500 2dw			+5,500 2ga2dw		
Porch/Patio/Deck	Porch/Deck			Porch / Patio			+2,000 Porch/Deck			Porches		
KITCHEN	ro mw dw ds			ro mw dw ds			ro mw dw ds			ro mw dw ds		
LANDSCAPING	Modest/Fence			Modest/Fence			Modest/Fence			Modest/Fence		
FIREPLACE	1 fireplace			None			+1,500 1 fireplace			1 fireplace		
Net Adjustment (Total)	[X] + [] - \$			14,080			[X] + [] - \$			18,020		
Adjusted Sale Price of Comparables				Net Adj. 12.30 % Gross Adj. 12.30 % \$			128,600			Net Adj. 16.38 % Gross Adj. 16.38 % \$		
							128,000			Net Adj. 10.98 % Gross Adj. 10.98 % \$		
										130,800		
☒ I did not research the sale or transfer history of the subject property and comparable sales. If not, explain <u>Public records and Richland County Assessor's records indicate the last recording of a transfer was 05/06/1998, FOR \$104,250. No sales of the three comps during prior year.</u>												
My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.												
Data Source(s) <u>Richland County tax assessors records, CMLS.</u>												
My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.												
Data Source(s) <u>Richland County tax assessors records as well as CMLS records.</u>												
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).												
ITEM	SUBJECT			COMPARABLE SALE # 1			COMPARABLE SALE # 2			COMPARABLE SALE # 3		
Date of Prior Sale/Transfer												
Price of Prior Sale/Transfer												
Data Source(s)	CMLS/Rich Cty Tx Rcd			CMLS/Rich Cty Tx Rcd			CMLS/Rich Cty Tx Rcd			CMLS/Rich Cty Tx Rcd		
Effective Date of Data Source(s)	10/31/2014			10/31/2014			10/31/2014			10/31/2014		
Analysis of prior sale or transfer history of the subject property and comparable sales <u>The analysis of the sales/transfer information for the subject property was obtained from CMLS and Richland County Tax Records, as of 10/31/2014. The analysis of the sales information stated in the grid was limited to CMLS and Richland County Tax Records as of 10/31/2014.</u>												
<u>Summary of Sales Comparison Approach</u> All comparables used are closed sales, located within the same market area as the subject, with similar market conditions. The comps are all considered to be good indicators of value. Appropriate adjustments have been made for all known and/or observed differences and were extracted from the market based on paired sales data. All sales were given equal weight in estimating the market value.												
Indicated Value by Sales Comparison Approach <u>\$128,000</u>												
Indicated Value by: Sales Comparison Approach \$ <u>128,000</u> Cost Approach (If developed) \$ <u> </u> Income Approach (If developed) \$ <u> </u>												
MARKET APPROACH IS THE BEST INDICATOR OF VALUE, WHICH SHOWS THE TYPICAL BUYER AND SELLER REACTION IN THE MARKETPLACE. THE INCOME APPROACH WAS NOT USED DUE TO THE LACK OF AVAILABLE DATA ON SIMILAR RENTAL PROPERTY.												
This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: <u>NO</u>												
CONDITIONS												
Based on a visual inspection of the exterior areas of the subject property from at least the street, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is <u>\$128,000</u> , as of <u>10/31/2014</u> , which is the date of inspection and the effective date of this appraisal.												

THE APPRAISER HAS NO CURRENT OR PROSPECTIVE INTEREST IN THE SUBJECT PROPERTY OR THE PARTIES INVOLVED. THE APPRAISER HAS NOT PROVIDED ANY SERVICES AS AN APPRAISER OR IN ANY OTHER CAPACITY ON THE SUBJECT PROPERTY WITHIN THE PRIOR THREE YEAR PERIOD IMMEDIATELY PRECEDING ACCEPTANCE OF THIS ASSIGNMENT. THE APPRAISER HAS "NOT" AGREED WITH THE CLIENT TO KEEP ANY PRIOR ASSIGNMENTS CONFIDENTIAL.

COST APPROACH TO VALUE (not required by Fannie Mae)

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value)	n/a
---	-----

INCOME APPROACH TO VALUE (not required by Fannie Mae)

PROJECT INFORMATION FOR PUDs (If applicable)

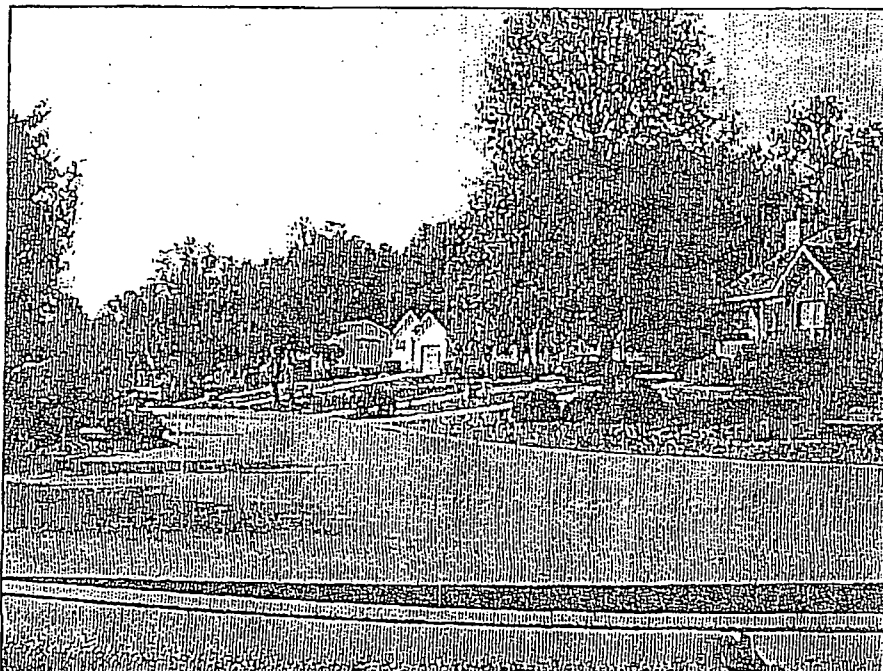
120



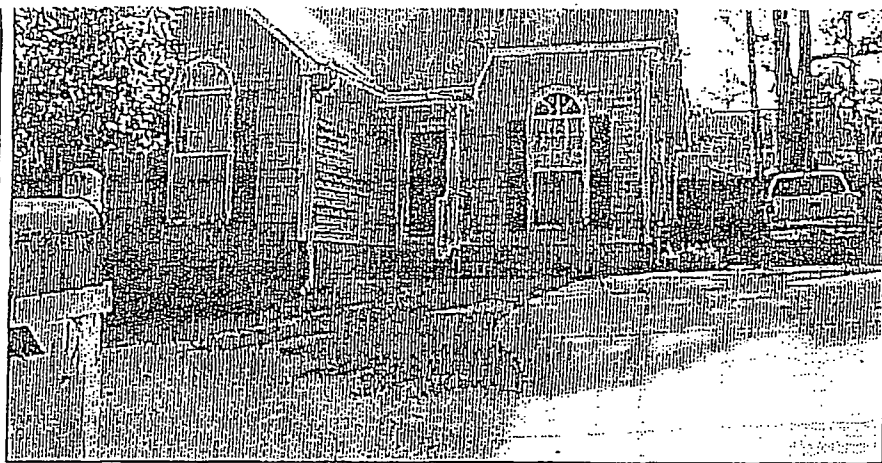
FRONT VIEW OF
SUBJECT PROPERTY



REAR VIEW OF
SUBJECT PROPERTY



STREET SCENE OF
SUBJECT PROPERTY

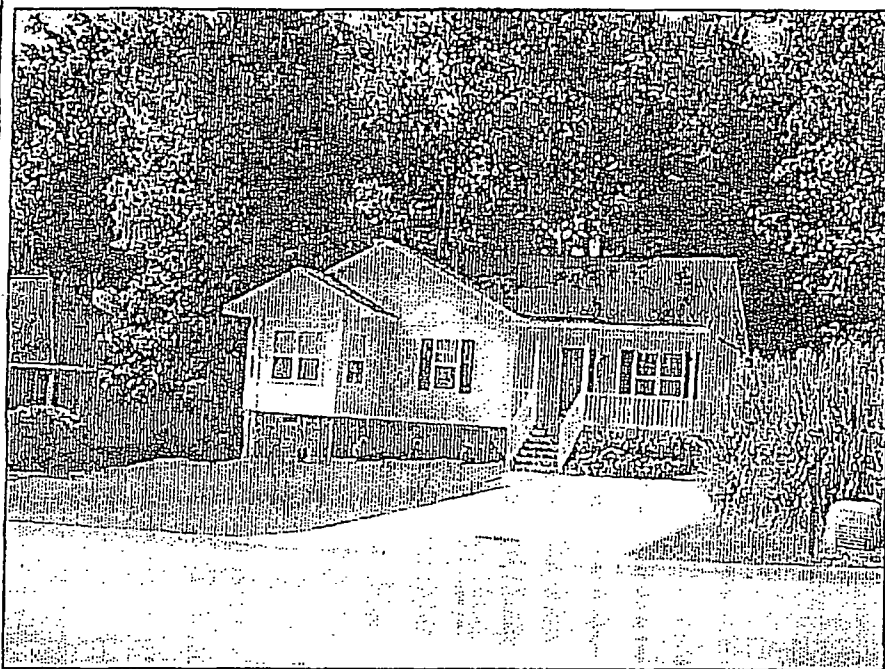


Price \$114,500
 Price/SF 87.61
 Date s03/14;c02/14
 Age 15
 Room Count 6-3-2.0
 Living Area 1,307
 Value Indication \$128,600

COMPARABLE #2

207 CADDIS CREEK ROAD
 Irmo, SC 29063-8139

Price \$110,000
 Price/SF 90.91
 Date s01/14;c11/13
 Age 15
 Room Count 6-3-2.0
 Living Area 1,210
 Value Indication \$128,000

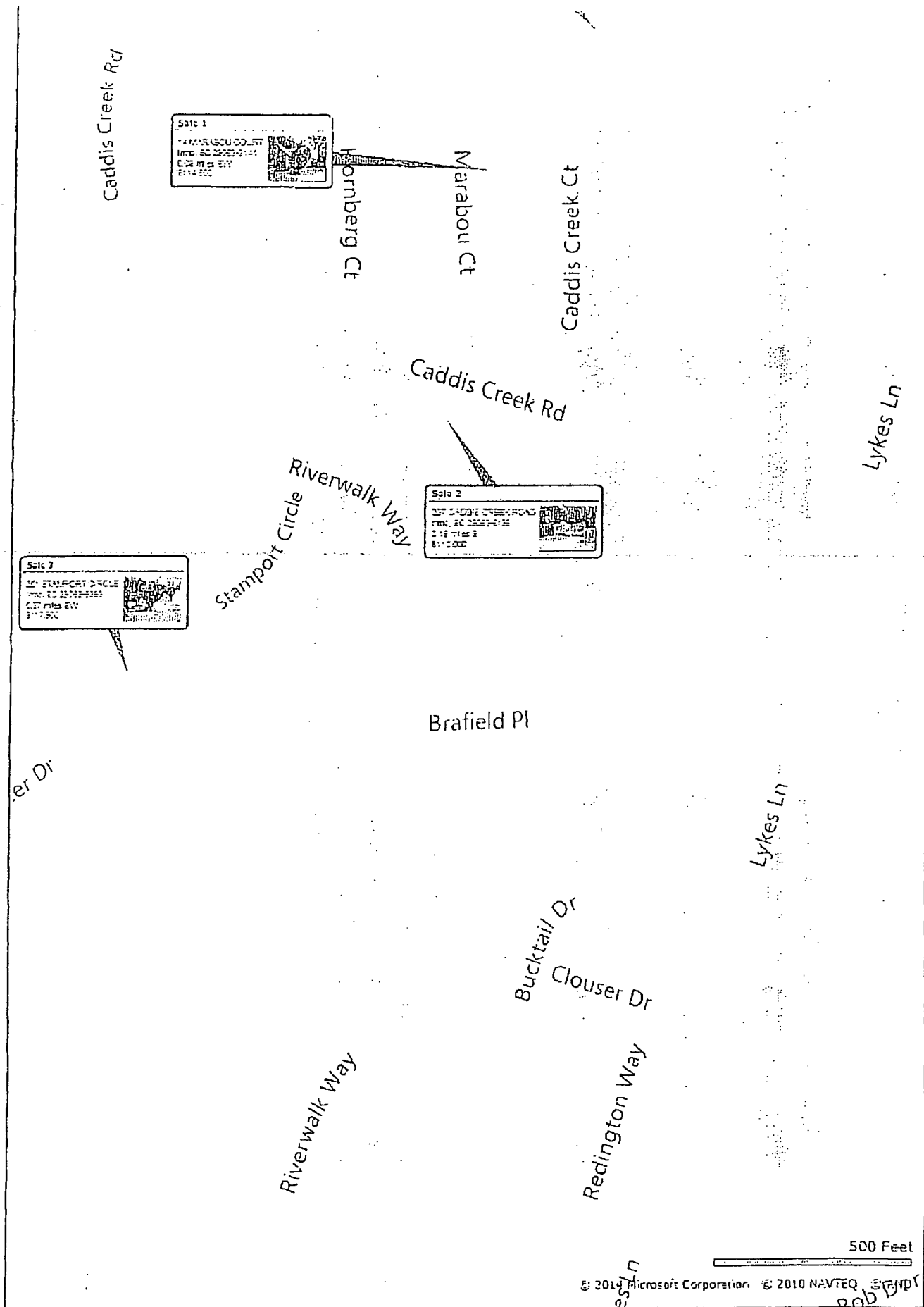


COMPARABLE #3

201 STAMPORT CIRCLE
 Irmo, SC 29063-9393

Price \$117,900
 Price/SF 86.44
 Date s05/14;c05/14
 Age 19
 Room Count 6-3-2.0
 Living Area 1,364
 Value Indication \$130,800





new foundation and recycled materials and the recycled components have been rehabilitated/re-manufactured into the new condition. Recently constructed improvements that have not been previously occupied are not considered "new" if they have significant physical depreciation (i.e., newly constructed dwellings that have been vacant for an extended period of time without adequate maintenance or upkeep).

C2 - The improvements feature no deferred maintenance, little or no physical depreciation, and require no repairs. Virtually all building components are new or have been recently repaired, refinished, or rehabilitated. All outdated components and finishes have been updated and/or replaced with components that meet current standards. Dwellings in this category either are almost new or have been recently completely renovated and are similar in condition to new construction.

**Note: The improvements represent a relatively new property that is well maintained with no deferred maintenance and little or no physical depreciation, or an older property that has been recently completely renovated.*

C3 - The improvements are well maintained and feature limited physical depreciation due to normal wear and tear, some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well maintained.

**Note: The improvement is in its first-cycle of replacing short-lived building components (appliances, floor coverings, HVAC, etc.) and is being well maintained. Its estimated effective age is less than its actual age. It also may reflect a property in which the majority of short-lived building components have been replaced but not to the level of a complete renovation.*

C4 - The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate.

**Note: The estimated effective age may be close to or equal to its actual age. It reflects a property in which some of the short-lived building components have been replaced, and some short-lived building components are at or near the end of their physical life expectancy; however, they still function adequately. Most minor repairs have been addressed on an ongoing basis resulting in an adequately maintained property.*

C5 - The improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability is somewhat diminished due to condition, but the dwelling remains useable and functional as a residence.

**Note: Some significant repairs are needed to the improvements due to the lack of adequate maintenance. It reflects a property in which many of its short-lived building components are at the end of or have exceeded their physical life expectancy but remain functional.*

C6 - The improvements have substantial damage or deferred maintenance with deficiencies or defects that are severe enough to affect the safety, soundness, or structural integrity of the improvements. The improvements are in need of substantial repairs and rehabilitation, including many or most major components.

**Note: Substantial repairs are needed to the improvements due to the lack of adequate maintenance or property damage. It reflects a property with conditions severe enough to affect the safety, soundness, or structural integrity of the improvements.*

Quality Ratings and Definitions

Q1 - Dwellings with this quality rating are usually unique structures that are individually designed by an architect for a specified use. Such residences typically are constructed from detailed architectural plans and specifications and feature an exceptionally high level of workmanship and exceptionally high-grade materials throughout the interior and exterior of the structure. The design features exceptionally high-quality exterior refinements and ornamentation, and exceptionally high-quality interior refinements. The workmanship, materials, and finishes throughout the dwelling are exceptionally high quality.

Q2 - Dwellings with this quality rating are often custom designed for construction on an individual property owner's site. However, dwellings in this quality grade are also found in high-quality tract developments featuring residences constructed from individual plans or from highly modified or upgraded plans. The design features detailed high-quality exterior ornamentation, high-quality interior refinements, and detail. The workmanship, materials, and finishes throughout the dwelling are of exceptionally high quality.

Q3 - Dwellings with this quality rating are residences of higher quality built from individual or readily available designer plans in above-standard residential tract developments or on an individual property owner's site. The design includes significant exterior ornamentation and interiors that are well finished. The workmanship exceeds acceptable standards and many materials and finishes throughout the dwelling have been upgraded from "stock" standards.

Q4 - Dwellings with this quality rating meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized and the design includes adequate fenestration and some exterior ornamentation and interior refinements. Materials, workmanship, finish, and equipment are of stock or builder grade and may feature some upgrades.

Q5 - Dwellings with this quality rating feature economy of construction and basic functionality as main considerations. Such dwellings feature a plain design using readily available or basic floor plans featuring minimal fenestration and basic finishes with minimal exterior ornamentation and limited interior detail. These dwellings meet minimum building codes and are constructed with inexpensive, stock materials with limited refinements and upgrades.

Q6 - Dwellings with this quality rating are of basic quality and lower cost; some may not be suitable for year-round occupancy. Such dwellings are often built with simple plans or without plans, often utilizing the lowest quality building materials. Such dwellings are often built or expanded by persons who are professionally unskilled or possess only minimal construction skills. Electrical, plumbing, and other mechanical systems and equipment may be minimal or non-existent. Older dwellings may feature one or more substandard non-conforming additions to the original structure.

Definitions of Not Updated, Updated, and Remodeled

Not Updated - Little or no updating or modernization. This description includes, but is not limited to, new homes. Residential properties of fifteen years of age or less often reflect an original condition with no updating. If no major components have been replaced or updated. Those over fifteen years of age are also considered not updated if the appliances, fixtures, and finishes are predominantly dated. An area that is "Not Updated" may still be well maintained and fully functional, and this rating does not necessarily imply deferred maintenance or physical/functional deterioration.

Updated - The area of the home has been modified to meet current market expectations. These modifications are limited in terms of both scope and cost. An updated area of the home should have an improved look and feel, or functional utility. Changes that constitute updates include refurbishment and/or replacing components to meet existing market expectations. Updates do not include significant alterations to the existing structure.

Remodeled - Significant finish and/or structural changes have been made that increase utility and appeal through complete replacement and/or expansion. A remodeled area reflects fundamental changes that include multiple alterations. These alterations may include some or all of the following: replacement of a major component (cabinet(s), bathtub, or bathroom tile), relocation of plumbing/gas fixtures/appliances, significant structural alterations (relocating walls and/or the addition of square footage). This would include a complete gutting and rebuild.

Explanation of Bathroom Count

Three-quarter baths are counted as a full bath in all cases. Quarter baths (baths that feature only a toilet) are not included in the bathroom count. The number of full and half baths is reported by separating the two values using a period, where the full bath count is represented to the left of the period and the half bath count is represented to the right of the period.

Example: 3.2 indicates three full baths and two half baths

Carb	Cash	
Comm	Commercial Influence	Location
Conv	Conventional	Sale or Financing Concessions
cp	Carport	Garage/Carport
CrtOrd	Court Ordered Sale	Sale or Financing Concessions
ChySky	City View Skyline View	View
CityStr	City Street View	View
cv	Covered	Garage/Carport
DOM	Days On Market	Data Sources
DT	Detached Structure	Design (style)
dw	Driveway	Garage/Carport
e	Expiration Date	Date of Sale/Time
Estate	Estate Sale	Sale or Financing Concessions
FHA	Federal Housing Administration	Sale or Financing Concessions
G	Garage	Garage/Carport
ga	Attached Garage	Garage/Carport
gbi	Built In Garage	Garage/Carport
gd	Detached Garage	Garage/Carport
GLCCse	Golf Course	Location
GLvw	Golf Course View	View
GR	Garden	Design (Style)
HR	High Rise	Design (Style)
in	Interior Only Stairs	Basement & Finished Rooms Below Grade
Ind	Industrial	Location & View
Listing	Listing	Sale or Financing Concessions
Lndfl	Landfill	Location
LndSght	Limited Sight	View
MR	Mid Rise	Design (Style)
Mtn	Mountain View	View
N	Neutral	Location & View
NonArm	Non-Arm's Length Sale	Sale or Financing Concessions
o	Other	Basement & Finished Rooms Below Grade
O	Other	Design (Style)
op	Open	Garage/Carport
Prk	Park View	View
Pstnl	Pastoral View	View
PubTrn	Public Transportation	Location
PwrLn	Power Lines	View
Relo	Relocation Sale	Sale or Financing Concessions
REO	REO Sale	Sale or Financing Concessions
Res	Residential	Location & View
RH	USDA - Rural Housing	Sale or Financing Concessions
rr	Recreational (Rec) Room	Basement & Finished Rooms Below Grade
s	Settlement Date	Date of Sale/Time
sf	Square Feet	Area, Site, Basement
Short	Short Sale	Sale or Financing Concessions
Unk	Unknown	Date of Sale/Time
VA	Veterans Administration	Sale or Financing Concessions
w	Withdraw Date	Date of Sale/Time
wo	Walk Out Basement	Basement & Finished Rooms Below Grade
Woods	Woods View	View
Wtr	Water View	View
WtrFr	Water Frontage	Location
Wt	Walk Up Basement	Basement & Finished Rooms Below Grade

reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a visual inspection of the exterior areas of the subject property from at least the street, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

The appraiser must be able to obtain adequate information about the physical characteristics (including, but not limited to, condition, room count, gross living area, etc.) of the subject property from the exterior-only inspection and reliable public and/or private sources to perform this appraisal. The appraiser should use the same type of data sources that he or she uses for comparable sales such as, but not limited to, multiple listing services, tax and assessment records, prior inspections, appraisal files, information provided by the property owner, etc.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
4. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
5. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks, I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature [Signature]
Name JAMES T. WHEAT
Company Name SC APPRAISAL SERVICE LLC
Company Address PO BOX 210545
COLUMBIA, SC 29221-0545
Telephone Number 803-798-8621
Email Address scappraisalservice@sc.rr.com
Date of Signature and Report 11/03/2014
Effective Date of Appraisal 10/31/2014
State Certification # CR 467
or State License # _____
or Other (describe) _____ State # _____
State SC
Expiration Date of Certification or License 06/30/2016
ADDRESS OF PROPERTY APPRAISED
25 Caddis Creek Court
Irmo, SC 29063-8140

APPRAISED VALUE OF SUBJECT PROPERTY \$ 128,000

LENDER/CLIENT

Name No AMC
Company Name Brian Boger
Company Address 1331 Elmwood Ave
Columbia, SC 29201
Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect exterior of subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

BOD-1819-7

State of South Carolina
Department of Labor, Licensing and Regulation
Real Estate Appraisers Board

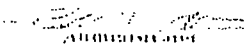
JAMES T WHEAT

Is hereby entitled in practice as a

Certified Residential Appraiser

License Number: 467

Expiration Date: 06/30/2016
by the State of South Carolina


ADMINISTRATOR

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Winrose Homeowners' Association,
Inc.,

Plaintiff,

vs.

Devery A. Hale and Tina T. Hale,

Defendants.

) IN THE COURT OF COMMON PLEAS

) C/A # 2014-CP-40-00847

CERTIFICATE OF SERVICE

I, Erin O'Donnell, Law Clerk at the Law Offices of Brian L. Boger, counsel for Defendants Devery Hale and Tina Hale, do hereby certify that I have served Plaintiff's counsel in this action with a copy of the documents specified below via United States First Class Mail.

Documents: Motion to Vacate Sale of Defendants

Counsel: Eric C. Hale
Law Office of Eric C. Hale
Post Office Box 1605
Irmo, SC 29063


Erin O'Donnell

November 4, 2014
Columbia, SC

RICHLAND COUNTY
FILED
2014 NOV -4 PM 1:32
JESSICA W. MCBRIDE
CLERK C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Winrose Homeowner's Association, Inc.,)
)
Plaintiff,)
)
v.)
)
Devery A. Hale and Tina T. Hale,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

C/A# ~~2010~~ CP-40-0847

2014
(Signature)

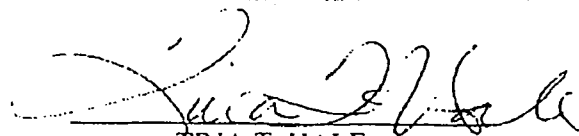
AFFIDAVIT OF TINA T. HALE

RICHLAND COUNTY
FILED
2015 FEB -6 AM 11:38
JESSICA M. HARRIS
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Tina T. Hale, who being
duly sworn states the following:

My name is Tina T. Hale. I live in my home with my family at 25 Caddis Creek Court in Irmo, South Carolina. I am 48 years old. I am employed by Dr. Thomas Major and have been there for 24 years. My Husband and I purchased our home in 1998 for \$104,250.00. We had it built and were one of the first families in the neighborhood. We have paid our mortgage faithfully for 17 years. My mortgage is with Bank of America. We have never missed a mortgage payment. Our balance due as of this month is only \$66,004.00. (EXHIBIT A) We have foregone some of the luxuries in life so that we could improve our home. My husband put a big pool in the back yard and did most of the work himself. My home means everything to me. It is far more than a building. It is my sanctuary; the place that I come to every night. It is the place that I feel safe and can be surrounded by the love of my family. Perhaps more importantly, it is where I am raising my children. It is my legacy for them and my husband. I have worked very hard to secure our home as the place that my children can feel safe. My children and my husband and I have many friends in the community. We want this to be the only home that we ever live in.

When we were served with the lawsuit to take away our home, I put the papers in a drawer and forgot about them. Some time after that, we received a bill from the HOA asking for \$250.00. I paid that without a problem. In November, we received a letter from the law firm of McCabe, Trotter & Beverly telling us that the Lien had been Satisfied. (EXHIBIT B) I thought that everything was OK after that. The next thing that I know, someone is knocking on my door telling me that they bought my home and that me and my family were being evicted. I can not believe that the home was purchased for around \$3,000.00 and they want \$70,000.00 from me to buy it back. There is something very wrong with these people being able to ask me to pay them more than I even owe on the mortgage.


TINA T. HALE

Sworn to and Subscribed before me
this February 10, 2015

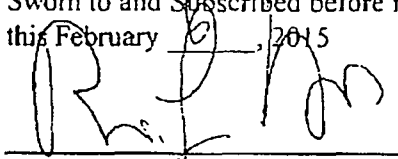

Notary Public for South Carolina
My Commission Expires: 8/28/15

EXHIBIT A

Bank of America Home Loans

PO Box 5170
Simi Valley, CA 93062-5170

0014758 01 AV 0378 **AUTO 2 1 0171 29063-814025 -C19-P147724 BANKDEFAU M25067

MSR A2D00101 8001000000000000 ..
DEVERY A HALE
TINA T HALE
25 CADDIS CREEK CT
IRMO SC 29063-8140



Customer service: 1 800.669.6607

TDD/TTY users only 1 800.300.6407

En Español 1 800.295.0025

Monday-Friday 7am to 7p.m. Local Time



bankofamerica.com

Account number	873278494
Payment due date	February 1, 2015
Total amount due	\$834.52
If payment is received after 02/17/15, \$31.29 late fee will be charged	

Your Home Loan Account

Statement date: January 16, 2015



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Account information

Property Address	25 CADDIS CREEK COURT
Loan type	30 Yr Conv w/PMI
Contractual remaining term	13 Years 04 Months
Principal balance	\$66,004.00
Escrow balance	\$299.30
Interest rate	6.500%
Prepayment penalty	No

Past payments breakdown

	Paid since last statement	Paid year to date
Principal	\$267.02	\$267.02
Interest	\$358.97	\$358.97
Escrow (taxes and insurance)	\$179.23	\$179.23
Fees, charges, and advances	\$0.00	\$0.00
Total	\$805.22	\$805.22

Explanation of total amount due

Principal	\$268.47
Interest	\$357.52
Escrow (taxes and insurance)	\$179.23
Regular monthly payment	\$805.22
Current period fees and charges	\$0.00
Overdue payments, fees, and charges*	\$29.30
Total amount due	\$834.52

*Please see the 'Other Important Information' section of this statement

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Learn about shopping deals, travel ideas, and tips to help you with personal finance.

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AR4SFT65

EXHIBIT B

Physical Address:
140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

Mailing Address:
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Locations in:
Mount Pleasant, SC
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Stephanie C. Trotter
Shareholder

Stephanie.Trotter@mccabetrotter.com

November 6, 2014

Devery A. Hale and Tina T. Hale
25 Caddis Creek Court
Irmo SC 29063

**RE: Winrose Homeowners' Association, Inc. Association Dues
25 Caddis Creek Court
Our File Number: 008928/00015**

Dear Devery A. Hale and Tina T. Hale:

Enclosed please find a copy of the Satisfaction of Lien and Satisfaction of Judgment that have been sent for filing with the Richland Register of Deeds Office and Clerk of Court. Please direct all future correspondence and payments to Winrose Homeowners' Association, Inc..

With kind regards, I am,

Yours very truly,
Stephanie C. Trotter

SCT/sls

Enclosures

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Winrose Homeowners' Association, Inc.,

Plaintiff,

v.

Devery A. Hale and Tina T. Hale

Defendant.

IN THE COURT OF COMMON PLEAS
C/A NUMBER: 2014-CP-40-00847

SATISFACTION OF JUDGMENT

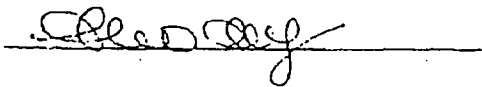
008928/00015

The undersigned, attorney for the Plaintiff, does hereby acknowledge receipt of funds sufficient to satisfy the judgment entered for the Plaintiff against the Defendant(s) in this case. This document does hereby release the judgment filed against the Defendant(s).

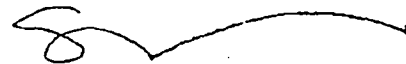
Judgment Number: 2014-CP-40-00847

WITNESS my hand and seal at Columbia, South Carolina, this 6 day of November, 2014.

WITNESS:



Columbia, South Carolina



Stephanie C. Trotter (SC Bar 77680)
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Attorney for Plaintiff

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master in Equity

Hon. Joseph M. Strickland, Master-in-Equity

Case No. 2014-CP-40-0847

Winrose Homeowners' Association, Inc., In Re: Regime Solutions, LLC

v.

Devery A. Hale and Tina T. Hale, Defendants.

of which

Regime Solutions, LLC Respondent,

v.

Devery A. Hale and Tina T. Hale..... Appellants.

NOTICE OF APPEAL

Appellants Devery A. Hale and Tina T. Hale appeal the order on Defendants' Motion to Vacate Sale of the Honorable Joseph M. Strickland.

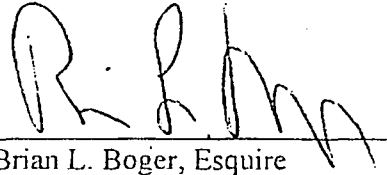
The order in this case was entered on April 21, 2015. The Appellants received written notice of the order denying their motion on August 4, 2015.

A copy of the order on appeal is attached hereto and incorporated by reference.

(SIGNATURE PAGE TO FOLLOW)

RECEIVED
AUG 21 2015
SC Court of Appeals

August 21, 2015



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Attorney for Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) CASE #: 2014-CP-40-0847

Winrose Homeowners' Association,)
Inc.,)
)
 Plaintiff,)
v.) **MOTIONS HEARING** :
)
Devery A. Hale and Tina T. Hale) **Friday, January 16, 2015**
) **11:20 a.m. to 11:25 a.m.**
 Defendants.)

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 16th day of January, 2015, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

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Irmo, South Carolina 29063
Attorney for the Third-Party Bidder

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

R 0057

1 THE COURT: Okay, Mr. Hale, would you read the caption for
2 me, please?

3 MR. HALE: Yes, Your Honor. This is Winrose Homeowner's
4 Association, Inc. versus Devery A. Hale and Tina T.
5 Hale, no relation. And my client is Regime
6 Solutions, LLC. They were the successful bidder at
7 the homeowners' association foreclosure sale and the
8 present owner of the subject property.

9 THE COURT: And today we're here for what proceeding?

10 MR. HALE: It's -- on two motions, very similar to the
11 last one. It's on a rule to show cause, which is
12 only going to be ripe I suppose after Mr. Boger's
13 motion to vacate the sale is heard. He has a
14 pending motion to vacate the sale based upon the
15 adequacy and sufficiency of the bid price.

16 THE COURT: All right, all right. This is another case we
17 need to continue, and I apologize, because of an
18 administrative issue in my office. I don't have
19 this case on the docket at all, and so as a result
20 I'm not prepared for it today. And I hate to hear
21 motions when I'm not prepared, especially one as
22 significant as setting aside the sale, judicial
23 sale. Now, Mr. Boger, just for clarity of the
24 record, are your clients still living in the
25 property?

1 MR. BOGER: They do, Your Honor, they're seated here with
2 me at the council table, and they are current on the
3 mortgage. There's never been an issue with the
4 mortgage payment.

5 THE COURT: All right. No, Mr. Hale's client is not
6 claiming there's any problem with the mortgage,
7 they're talking about the regime fees; is that
8 correct, Mr. Hale?

9 MR. HALE: They were the successful bidder at the
10 foreclosure sale.

11 THE COURT: Yeah. And of course that law is kind of in
12 flux, it's in flux in my mind because I'm not sure
13 that you can handle a regime fee the same way you
14 can handle a mortgage, as far as the foreclosure
15 process is concerned. However, that's the way it's
16 been done the last few years. In fact, Ms.
17 Trotter's firm has been a pioneer in that whole
18 effort and have yet to convince anybody, any judge I
19 think, that there's anything wrong with what y'all
20 are doing. Is that the case, is that accurate?

21 MS. TROTTER: I think we've got seven orders, we're up to
22 about seven.

23 THE COURT: From judges that say you're okay?

24 MS. TROTTER: Yes, approving the process.

25 THE COURT: Right. And, Mr. Hale, your client bid on the

1 property at the judicial sale?

2 MR. HALE: That's correct.

3 THE COURT: And got a deed from our office?

4 MR. HALE: That is correct, Your Honor.

5 THE COURT: Which was duly recorded?

6 MR. HALE: That's right.

7 THE COURT: All right. Now, are you willing to settle

8 this with the Hales?

9 MR. HALE: We've made offers in settlement with the Hales.

10 Candidly, my client is not being what I consider

11 reasonable in their expectations. The reality is,

12 my clients believe there is significant equity in

13 the property and that they stand to profit from

14 getting the property and paying the mortgage off.

15 THE COURT: I was going to ask you that. They plan to

16 assume the mortgage?

17 MR. HALE: They are prepared to pay the mortgage off once

18 they have quiet title to the property.

19 THE COURT: Okay. Mr. Boger, it looked like your client

20 wanted to say something or either speak to you.

21 MR. BOGER: Well, I just wanted to make sure that this

22 matter is going to be continued, is that correct?

23 THE COURT: Yes, yes. You know, I know you did make a

24 motion, but I'm going to do it because I'm not

25 prepared to hear it today.

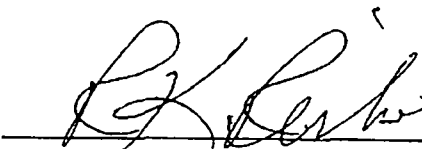
1 MR. BOGER: Okay, I'd -- rather than going through all of
2 it twice, I'd rather -- I mean, I can chat about it
3 maybe off the record.
4 THE COURT: Yeah, y'all can chat with each other. Mr.
5 Hale, though, wanted to say something, so I want to
6 let him speak if he wants to.
7 MR. BOGER: Okay. I think it's just not time for him to
8 speak.
9 MR. DEVERY HALE: No, I don't.
10 THE COURT: All right.
11 MR. BOGER: We'll continue it.
12 THE COURT: Would you do me a favor, Mr. Hale, send me an
13 email or a letter just reminding me of the two
14 cases, that there are motions involved that were not
15 scheduled, and I'll make sure that I don't drop the
16 ball next time. I apologize to everyone concerned.
17 MR. HALE: No problem.
18 (There being nothing further, the hearing was concluded at
19 10:05 a.m.)

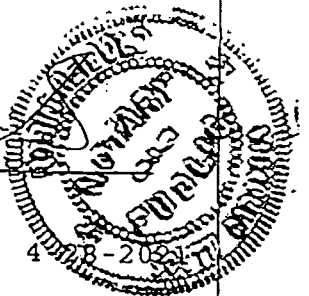
CERTIFICATE

I certify that the foregoing transcript, consisting of 5 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on August 15, 2014, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

January 23, 2015


ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-2018



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2014-CP-40-0847

Winrose Homeowners)
Association, Inc.,)
Plaintiff,)
v.)
Devery A. Hale, et al.,)
Defendant.)

HEARING

Friday, February 6, 2015

11:30 a.m. to 12:03 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 6th day of February, 2015, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

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APPEARANCES

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Attorney for the Third-Party Bidder

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EXHIBITS

(There were no exhibits marked during this hearing.)

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1 **THE COURT:** All right. This is Civil Action Number 2014-
2 CP-40-0847. We have two motions. We have one
3 motion for a writ of assistance, which is another
4 way of saying an eviction because of the -- in the
5 foreclosure case. And we also have a motion to set
6 aside the judicial sale. So I guess logically we
7 should hear the motion and set aside the judicial
8 sale first. And if that motion is granted, there
9 won't be an eviction. But if that motion is denied,
10 we'll need to set a move out date. Mr. Boger, do you
11 need a few minutes or are you ready?

12 **MR. BOGER:** Well, the only thing, if I could ask the
13 Court's permission to perhaps file some affidavits
14 post the hearing for it to make the record right. I
15 have not had a chance to go clock them in, and I
16 need to give them to him. Once again, I apologize.

17 **THE COURT:** Oh, that's all right.

18 **MR. BOGER:** But there's fairly -- they're not shocking
19 affidavits.

20 **THE COURT:** You said post the hearing, after the hearing
21 is over?

22 **MR. BOGER:** After the hearing. Yes, sir.

23 **THE COURT:** Or you want to do it now? We've got until
24 2:00, because ---

25 **MR. BOGER:** Okay. Well, I'm going to clock them in real

3

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1 quick.

2 **THE COURT:** Okay. We'll stand at ease and you can do

3 that.

4 **MR. BOGER:** Okay, thank you.

5 **(Off the Record)**

6 **THE COURT:** Mr. Boger, you may proceed.

7 **MR. BOGER:** Thank you, Your Honor. Let me pass up the

8 affidavits of my clients.

9 **THE COURT:** Thank you. All right, one moment please, let

10 me read it.

11 **MR. BOGER:** Okay. Your Honor, may it please the Court.

12 **THE COURT:** Give me one moment, please, I'm sorry. I just

13 want to read the affidavits before we get started.

14 Let me do my best to make it clear that I understand

15 the facts. Winrose Homeowners Association,

16 Incorporated sued Mr. and Ms. Hale and prevailed --

17 foreclosed on the lawsuit in South Carolina,

18 prevailed, and there's a judicial sale, and the

19 property was bought at the judicial sale by a third

20 party. And the person -- the entity suing was the

21 homeowner's association. It was not a mortgage

22 foreclosure, it was a homeowners association

23 foreclosure. Mr. Hale is here representing the

24 purchaser. Now, this -- do you have your deed

25 already? I'm sorry, not Mister -- well, I

4

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1 mispronounced it. One moment, please. Okay. All
2 right. I'm sorry, let me start over again. I've
3 gotten the names confused. Better quit talking.
4 But, in essence, there was judicial sale of a
5 foreclosure of a homeowner's association lien, and
6 now the new owner wants to evict the family that was
7 the owner. And the family wants to set aside the
8 judicial sale. And I'm looking at an addendum to the
9 affidavits that were just handed up. And this
10 addendum is styled "Satisfaction of Judgment" and
11 indicates that "the undersigned attorney for the
12 plaintiff does hereby acknowledge receipt of funds
13 sufficient to satisfy the judgment entered for the
14 plaintiff against the defendants in this case. This
15 document does hereby release the judgement filed
16 against the defendants, Judgment Number 2014-CP-40-
17 847," which matches the docket number of the case.
18 Now, I'm scratching my head. Do we have a sale even
19 after the debts were satisfied?

20 **MS. TROTTER:** No, Judge. The sale was before the judgment
21 was satisfied. The judgment was satisfied with the
22 proceeds of the sale.

23 **THE COURT:** Okay. So it doesn't -- in other words, they
24 didn't pay it ahead of time?

25 **MS. TROTTER:** No. The -- we received \$3011.58 on October

1 the 20th, 2014, and that was a check from your
2 office.
3 **THE COURT:** Right.
4 **MS. TROTTER:** From the proceeds of I believe Regime
5 Solutions.
6 **THE COURT:** Okay. All right. Mr. Boger, you may proceed.
7 **MR. BOGER:** Thank you, Your Honor.
8 **THE COURT:** Yes, sir.
9 **MR. BOGER:** I do have a small housekeeping matter before I
10 argue. The caption of the case is Winrose
11 Homeowners Association versus Hale. But I think the
12 -- but I think Regime Solutions has brought the
13 action for the eviction.
14 **THE COURT:** That's correct.
15 **MR. BOGER:** For the record, I just want that to be clear,
16 that although we're operating under the same docket
17 number, I think there's a separate action -- and I
18 guess it's been brought by Regime?
19 **MR. HALE:** Right. It's not -- it is the same docket
20 number. The only reason is because the final
21 foreclosure decree in the case preserves unto the
22 Master-in-Equity jurisdiction to put the successful
23 bidder in possession of the property. So we're
24 pursuing -- proceeding as the successful bidder
25 pursuant to the foreclosure decree. So it's kind of

6

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1 difficult -- I'm not substituting myself as the
2 plaintiff, so that's why we just filed these things
3 under the former caption and spelled out in the body
4 what my client's interest is in the property.

5 **THE COURT:** Okay. And I guess to avoid confusion, at some
6 point somebody may be reading this record that
7 doesn't know anything about the case. Mr. Hale
8 representing the third-party bidder has the same
9 last name as the family that ---

10 **MR. HALE:** That's correct. No relation, but has the same
11 last name. That's correct:

12 **THE COURT:** Right. So I hope the record will be clear on
13 that, and we can proceed. Let me ask though before
14 we get started, I'm looking through your motion. Mr.
15 Eric Hale, your client paid how much at the judicial
16 sale?

17 **MR. HALE:** My client paid the sum of \$3036 at the judicial
18 sale.

19 **THE COURT:** Okay. And I think y'all have been negotiating,
20 and please correct me if I get out of line, but I
21 think y'all have been negotiating selling the
22 property back to them; is that correct?

23 **MR. HALE:** We've had some discussions. In furtherance of
24 that, the defendants have early on made an offer to
25 purchase the property back from my client -- I mean,

7

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1 to my client. Their offer was not unreasonable in
2 my estimation; however, my client is -- my client
3 recognized that the property had equity in it, and
4 they declined their offer. They had made a counter
5 offer, which was significantly more than the offer
6 that the former homeowners made, and that is what is
7 necessitating this motion hearing today.

8 **THE COURT:** All right. Now, the affidavits from the
9 Hales, Tina and Devery Hale, says that y'all want
10 them to pay \$70,000; is that accurate? Is that -- I
11 mean, Mr. Boger, are y'all saying -- that's what
12 your clients said?

13 **MR. BOGER:** That was the first.

14 **THE COURT:** That was another -- that was one of the first
15 -- yes, sir?

16 **MR. HALE:** I don't believe that's accurate. If I need to
17 get an affidavit to contest that issue, I'll be happy
18 to go back to my client. I don't -- I don't know, and
19 I don't know that it's even relevant to the hearing
20 before Your Honor today. But my understanding was -
21 - and this is my understanding, I'd have to clarify
22 this with my client to be a hundred percent on it.
23 There's \$70,000 worth of equity in the property and
24 that my client was willing to split the difference
25 with them and let them pay half of the equity back

8

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1 to them in order to -- that's my understanding, but
2 I'm not a hundred percent on it. If I need to get an
3 affidavit to that effect, I can go to my client, but
4 I don't know.

5 **THE COURT:** And there's a mortgage on the property?

6 **MR. HALE:** There is a mortgage on the property. I think
7 his client -- it's \$104,250 according to the public -
8 - public record. His clients, by way of affidavit,
9 represent that the balance presently owing is about
10 \$66,000.

11 **THE COURT:** Okay. Now, this -- it happens sometimes that
12 we set aside a judicial sale. I take that very
13 seriously. That's a fairly serious outcome. But
14 over the years, in reviewing these type of motions,
15 one of the reasons sales are set aside is because --
16 because the amount paid at the sale apparently wasn't
17 really reflective of what the property was actually
18 worth. And Mr. Boger probably has a more artful way
19 of stating that.

20 **MR. HALE:** Well, and I think that's basically the argument
21 that's before you today. Everybody has one or
22 another position on it. I'm going to hand you up a
23 case. If I may approach, Your Honor.

24 **THE COURT:** Oh, sure.

25 **MR. HALE:** The case of Arrow Bonding.

1 THE COURT: Uh-huh.

2 MR. HALE: I won't make you read the whole thing.

3 MR. BOGER: I have it right here.

4 MR. HALE: You've already got it? And I believe this is a
5 case that is directly on point here in South
6 Carolina. This case involved a situation where a
7 bondsman was given a -- was given a piece of -- a
8 pledge on a piece of property and was subject to,
9 just like in this case, and is subject to a senior
10 mortgage on the property. In fact, it was several.

11 THE COURT: Right.

12 MR. HALE: But I'm not going to go way into the details.
13 It's just like this case. My client owns this
14 property subject to the senior mortgage on the
15 property. The fact that they only paid \$3036 for it
16 cannot be considered absent also considering the
17 mortgage out there that they will have to pay in
18 order to be the free and clear owners of this
19 property. As I set out in my motion, before I knew
20 what the balance was on the mortgage, I took the
21 amount of the mortgage plus the bid, which came out
22 to \$107,000. And then I divided that number by the
23 amount that they say the property is worth,
24 \$128,000, which came out to approximately 83 percent
25 of the value of the property. Now, I've just done

10

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1 the math quickly in my head. With the amount that
2 they're saying now, my clients paid roughly 54
3 percent of the value of the property. Neither one
4 of those shock the conscience. I know Your Honor
5 sells properties all day long in here for 54 percent
6 of the fair market value. Moreover, if this
7 argument was to prevail, my client nor Ms. Trotter
8 will ever be able to sell a property at a
9 foreclosure sale by way of a homeowners association
10 fee because their dues are never going be more than
11 five, six, \$7,000. The property is always going to
12 be worth 100, 200, \$300,000, and it's always going to
13 shock the conscience if you don't take into
14 consideration the value of the mortgage on the
15 property as well. So, in essence, there will be no
16 more foreclosure -- HOA foreclosures if this theory
17 prevails. And I think that public policy and our
18 longstanding jurisprudence in that regard prohibits
19 such an outcome. Thank you, Judge.

20 **THE COURT:** Okay. Now, Mr. Boger, if I grant your motion
21 to set aside the sale, what happens to the
22 homeowners association's dues and what happens to
23 Mr. Hale's client? I mean, what would happen to
24 those people if, in fact, I grant your motion?

25 **MR. BOGER:** Your Honor, my clients are willing to pay the

11

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1 full amount of the lien, which was \$3036 that they
2 paid. And, quite frankly, you've asked and my
3 clients have put in the affidavit, they've also
4 offered a 300 percent profit to Mr. Hale's clients.
5 They've offered \$9000 to pay -- to pay -- to buy
6 their house back. And I think -- I think -- I'm
7 going to say Eric, because it just makes it easier --
8 --

9 THE COURT: Okay, I'm sorry.

10 MR. BOGER: Eric -- I think Eric is right. I think the
11 equity is \$70,000, and I think that his clients
12 wanted \$35,000 from my clients. I think that's -- I
13 think my clients in their affidavit say it's -- that
14 the offer was 70, but I think it's 70 divided by 2.

15 THE COURT: Well, if I grant your motion, how soon could
16 your clients pay what they're offering to pay?

17 MR. BOGER: They ---

18 THE COURT: Both to the regime and both -- I'm sorry, the
19 homeowners association and both to Mr. Eric Hale's
20 client?

21 MR. BOGER: They can pay that today, Your Honor.

22 THE COURT: Okay. And how would they pay it, with a
23 cashier's check or certified funds or cash or ...

24 MR. DEVERY HALE: Certified check, we can ---

25 MR. BOGER: A cashier's check, Your Honor.

12

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1 MR. DEVERY HALE: Yeah.
2 THE COURT: Okay. If I grant the motion.
3 MR. BOGER: If you grant the motion. I do want to go
4 through for the record some ---
5 THE COURT: Oh, please. Yeah.
6 MR. BOGER: So, but to answer your -- any more questions,
7 Your Honor, along those lines?
8 THE COURT: I may have some -- because keep in mind, even
9 though I think Mr. Eric Hale said we do this all the
10 time, it's unusual for us to set aside a judicial
11 sale. That is actually rare, and I want to give
12 both sides the full benefit of a clear record for
13 what -- you know, because whoever I rule against is
14 going to probably take it up. And if the staff
15 attorneys and the law clerks and the judges and the
16 justices above read this, I want to make sure they
17 understand what's going on, at least have the facts
18 straight even if, you know, I make a mistake in some
19 other area, but at least we'll have the facts
20 straight. So you may go ahead.
21 MR. BOGER: Well, Your Honor, I had taken -- taken the
22 time looking forward for an appeal, and I'm prepared
23 to argue, I think in a very cogent manner, why this
24 is different than every other case that has been at
25 the Court of Appeals or Supreme Court in this regard

13

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1 so far. And let me -- let me begin by saying that
2 the history of foreclosures in South Carolina and
3 America has changed since 2008, and especially 2009,
4 beginning with the HAMP program in May of 2009 for
5 South Carolina, the first -- the first
6 administrative order. And then in May of 2011, the
7 second administrative order. I think our court has
8 recognized the fact that our country has a problem
9 with foreclosures, and particularly with mortgage
10 companies. And, quite frankly, Your Honor, I've
11 looked very carefully at the administrative order in
12 regard to whether or not it addresses homeowners
13 associations, and it does not. But I just wanted --
14 from a public policy overall view, there's no
15 question that mortgage foreclosures are treated
16 differently now than they were in 2007. Now, having
17 said that, there have been other cases that have
18 been ruled upon that shock the conscience, which is
19 the -- which is the standard language in our state
20 in this regard. And the first one I'd like to talk
21 about is Fingerhut -- I'm sorry, Bloody Point versus
22 Ashton. And I'll pass that up. I think -- I think I
23 passed it up before, and I've got a little tab on
24 there. And I think I gave this to you before. This
25 is out of Beaufort County, and the first -- and I'll

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1 summarize it this way: Bloody Point sold a -- sold a
2 piece of property. The people who lost it came in
3 and said, what a minute, the value is -- is wrong,
4 just like we're saying here. That part's accurate.
5 We're saying that the value is wrong. But before
6 trial, before the hearing, the people who bought it
7 went and did their own investigation of the value.
8 And they said, and proved beyond any doubt, that the
9 value of that property was in the neighborhood of
10 \$20,000. And I may be off a little bit, but it was
11 well under, well under the amount that was -- it was
12 within that ten percent range on the bid, well
13 within that range. And part of the reason it was
14 that way is, unfortunately, this was Hilton Head,
15 and the property when they bought it was worth a
16 fortune, and by the time it got sold it was worth
17 almost nothing, just like we've seen at Cobblestone,
18 Your Honor, when those lots were selling for
19 \$250,000, and you and I know they went down to \$1000
20 before they were done. So the Bloody Point case is
21 different in that the people that bought it were
22 able to prove that the value was very low, not very
23 high. So let's move -- now, that was a 2014 case,
24 and the court by dicta talks about how the rule, the
25 standard for shocking the conscience, is about ten

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1 percent -- is ten percent of the value of the
2 property. So let's move backwards just a little bit
3 and look at Wells Fargo versus Turner. And you can
4 pass that up to Your Honor. And I have, Your Honor,
5 for your edification, highlighted the parts that I
6 believe are relevant. Now, this was out of
7 Orangeburg County. And this case, this was a
8 mortgage foreclosure, a typical mortgage
9 foreclosure. The mortgage was foreclosed upon. The
10 bidder at the sale bid \$3000, very similar to the
11 amount here. The mortgage company apparently did
12 not send the proper bid person or proper bid at the
13 sale, and \$3000 was 3.65 percent, as you can see
14 where I've highlighted, Your Honor, on the second
15 page, 3.65 percent of the value of the property
16 which was said to be \$86,563. So the court said,
17 well, there's your value, \$86,000, that's what the
18 mortgage was worth. Obviously the bank made a
19 mistake by not setting the proper bid. The court,
20 it shocked the conscience of the court -- of our
21 appellate court, and they reversed the sale, they
22 vacated the sale with no problem because the values
23 were there. Unlike at Bloody Point, where the
24 values were proven to be different than what the
25 homeowners argued. Actually, not homeowners, just

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1 owners of property. Now, let's talk about the case
2 that Eric Hale talked about, and that is Arrow
3 Bonding versus Warren. And once again, I would
4 point out that the difference in that case is this
5 is not a homeowners association lien, this was a
6 judgment by a bonding -- it was against a bonding
7 company. Somebody put property up for bond, the
8 criminal didn't show up I suppose, and there was a
9 judgment. The key to this case is on page three,
10 Your Honor, at the bottom of the left-hand side of
11 that case; and I would -- if I can approach, it's --
12 it's on the bottom of the left-hand side, and it
13 says, "Warren," who was the person trying to undo
14 the sale, "Warren failed to demonstrate gross
15 inadequacy in the sales price, as the record is
16 devoid of evidence of the true value of the
17 properties." That's the key. There was -- that's why
18 the court -- they had nothing to base anything to
19 shock anybody's conscience on because the record was
20 void. Now -- now, the reason that this case, now
21 turning to my client, the Hales here, the reason
22 this case is different, I am giving Your Honor all
23 kinds of reasons why the evidence of value is in
24 front of you. The first one is in my motion to
25 vacate itself, which is -- and, Your Honor, do you

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1 have -- does Your Honor have the actual motion?

2 THE COURT: I have it in the file.

3 MR. BOGER: Well, attached to that motion is, if I could
4 pass it up, Your Honor ---

5 THE COURT: Sure, that's fine.

6 MR. BOGER: --- is a copy. We went ahead and did, in
7 anticipation of this hearing, we went ahead and had
8 an appraisal done of this property, a current
9 appraisal in 2014, and it's \$128,000. So if you go
10 back to the Orangeburg County case, that's the Wells
11 Fargo versus Turner, where they had the value there,
12 and that -- and I daresay that was an \$86,000 value.
13 I'm giving you \$128,000 value with the same purchase
14 price. And we have the value. Even more, I'm giving
15 another basis for Your Honor to rule to help these
16 fine people, and that is we have also have attached
17 by affidavit a copy of their mortgage statement, and
18 it shows the balance on that is \$66,000. If you do
19 the difference between 66 and 128, it's -- I was
20 going to go -- it's 54,000, my good friend Eric --
21 54,000. It's two and a half percent -- I'm sorry,
22 it's less than ten percent. You get the idea, Your
23 Honor, hopefully. \$54,000. If they only paid
24 \$3000, it's still way under ten percent. If they had
25 paid \$5400, I might have a problem. On the equity,

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1 just the equity, not the value. So I have two
2 reasons, two -- and I can't always do this. I've got
3 two wonderful reasons. I've got value of property
4 and I've got equity to show that this sale should be
5 vacated. And the other -- the other reasons are --
6 and I really thought a lot about this, Your Honor,
7 these, as you know, these cases bother me
8 tremendously. But I think that as a -- as a public
9 policy, we need to -- we need to think about people
10 losing their homes on homeowners association dues
11 and maybe having this court or the appellate court
12 say, you know, say in a homeowners association lien
13 case, we need to look at the value before we sell
14 it. We need to look at the equity before we sell
15 it. Does that mean we need to check the title on
16 every one? I don't think so, but I think counsel for
17 the HOA could do a quick search and provide that in
18 an affidavit form, which would not take any time at
19 all to say there's a mortgage on it, it's current,
20 it's not current, and here's the value of the
21 property. It would not be a burden on the court, or
22 certainly it'd be a very small burden on the HOAs,
23 and they wouldn't find themselves in court all the
24 time on these matters. And finally, Your Honor, the
25 -- I think this Court has the ability in its gavel

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1 to do equity where perhaps equity should be done.
2 And even my good friend Eric Hale says his clients
3 have been unreasonable in negotiations. I think
4 that these people deserve this home. They're hard-
5 working people. They're not behind on their
6 payments. Ms. Hale works as a dental assistant.
7 She cleans teeth all day, God bless her. And Mr.
8 Hale works at the -- in the prison system for the
9 State of South Carolina. These are fine people,
10 making their house payment. I just -- I think I've
11 given you enough reasons, Your Honor, to vacate this
12 sale. And we'll pay the money, we'll pay them \$9000
13 today in a cashier's check, if they will just take
14 it.

15 **THE COURT:** Okay. Ms. Trotter, anything to add?

16 **MS. TROTTER:** Just briefly, Judge. I just want to point
17 out, there's been a lot of talk about equity and
18 everything. I think the defendants -- I'm going to
19 refer to them as defendants for the Hale confusion,
20 in their affidavit, they admit they were served with
21 this. They put it in a drawer and didn't do anything
22 with it. The record is replete with notices that
23 were sent, from the affidavit of default and order
24 of reference, to the notice of hearing. No one
25 appeared at the hearing. My office had no contact

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1 with anybody before the hearing. So, to the extent
2 there's a discussion about placing extra burdens on
3 the association, in this particular case there was
4 absolutely no contact from the defendants before we
5 ever made it to the sale. I think the defendants'
6 attorney has stated -- Mr. Boger has stated, you
7 know, that my office could do research. No one will
8 tell me whether the mortgage is in default or not.
9 All I can do is look on the public index, which we
10 do before we file our own action. Obviously if
11 there's a lis pendens in place, we're not going to try
12 and beat a senior lien. But I have no way of
13 knowing if someone is paying their mortgage. I have
14 no way of knowing the -- in this particular case, I
15 had a title abstract that did show the original
16 mortgage amount, but I had no idea that there was
17 some amount of equity in the property because that's
18 just not public knowledge.

19 **THE COURT:** And also in South Carolina, you're not -- in a
20 foreclosure, you're not required to join a senior
21 lien holder as a part of the foreclosure.

22 **MS. TROTTER:** Correct, because my foreclosure cannot
23 possibly affect their legal rights to their
24 mortgage, so they're not a necessary party to the
25 foreclosure. In closing, the plaintiff would just

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1 agree with the case that's before the Court. I think
2 the important part of the Arrow Bonding case, it
3 says -- the Wells Fargo case, yes, the amount of the
4 mortgage was a fair gauge of the property's value
5 because a senior mortgage is wiping out any junior
6 encumbrances. It says the Arrow case is different
7 because in a judgment execution sale, much like a
8 foreclosure sale by a junior lien holder, the buyer
9 takes the property subject to the mortgage as well
10 as the other liens. So the Arrow Bonding case
11 simply stands for the proposition that, yes, a
12 third-party bidder may pay \$3000 cash at a sale, but
13 they don't get a property free and clear. They also
14 have a -- in this case I think a \$66,000 mortgage as
15 well. So that \$66,000 has to be added to the cash
16 that they paid at the sale when determining what
17 their purchase price was to then apply the ten
18 percent shocks-the-conscience standard, which I
19 think Eric Hale has said works out to about 54
20 percent of the appraisal that the defendants have
21 obtained. So I think Arrow Bonding is directly on
22 point. But if you take the cash Regime Solutions
23 paid at the sale, plus the senior lien that they
24 assume or they hold the title subject to, you get 54
25 percent of the total value of the price, which is

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1 well outside the ten percent range that the courts
2 have said shocks the conscience.

3 **THE COURT:** Now -- oh, go ahead, Mr. Hale.

4 **MR. HALE:** Well, I just want to make sure just in case we
5 appeal one way or the other that I've made my record
6 as well. I wanted to hand up, Your Honor -- I've
7 already handed this to Brian previously, but these
8 are just some documents that are part of the public
9 record. It's a copy of the mortgage and the UCC, as
10 well as the print out for -- from the Register of
11 Deeds Office with regards to the taxable value on
12 the property as well.

13 **THE COURT:** Okay.

14 **MR. HALE:** It's -- I'm going to say the same thing that
15 Brian has already said. The property is worth about
16 \$128,000. That's what his appraisal says, that's what
17 the -- that's what the Register of Deeds is taxing it
18 at. Everybody agrees it's \$128,000. I want to make
19 a couple of points really quick, and I believe
20 Stephanie pointed this out, but I want to make it
21 crystal clear. Brian says he relies on Wells Fargo
22 versus Turner. That case is specifically
23 distinguished in the Arrow Bonding case. It is
24 referred to, and it says, hey, that's a senior
25 mortgage foreclosure case, it involved a deficiency

23

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1 sale. The senior mortgage came in and bid at the
2 deficiency sale \$3000. It was an accident. It was
3 3.65 percent of the total value, less than ten
4 percent. It shocks the conscience. So, but that's
5 not what we have in our case. In Arrow Bonding, we
6 have a judgment. It's a junior lien foreclosure.
7 And they said the proper way -- this is a Judge
8 Booth case by the way from Sumter County, says Judge
9 Booth did it right. The way to calculate this is
10 how much did the bidder at the junior lien
11 foreclosure sale bid, and what liens did he take it
12 subject to. We add all those together, and we
13 divide it by the fair market value, which in this
14 case Brian talks about the record being devoid. The
15 reason that was important in this case is they
16 assumed certain values to the property based upon
17 the public index because they had nothing else.
18 But, even if we take Brian's case -- take all Brian's
19 evidence here, we take \$66,000, we add \$3000 to it,
20 that makes roughly \$70,000 that my client is
21 obligated to pay by virtue of their bid in order to
22 be the owner of this property. And the property is
23 worth approximately \$128,000. My client has
24 effectively paid almost 60 percent of the value of
25 this property. That doesn't shock the conscience.

24

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1 It just doesn't shock the conscience. It's not ten
2 percent, it's not anywhere close to ten percent; it's
3 six times that much. Brian also talks about putting
4 burdens on the association. But what he fails to
5 consider is the burden is put on a bidder. My
6 client is a bona fide purchaser. They paid good
7 money for value without notice of any liens or
8 defects out there other than what's on public index.
9 I can't be -- my client cannot be responsible for
10 trying to divine what the property is worth. We
11 don't know if they refinanced the property. We don't
12 know if the bank has made a subsequent advance on
13 the original mortgage. We don't know. All we know
14 is there's a mortgage out there, and we're taking it
15 subject to that. I also want to just clarify, just
16 in case my client gets a chance to read this
17 transcript, I didn't indicate my client was being
18 unreasonable in their dealings, but that the Hales
19 were not being unreasonable in their offer and that
20 I thought that it was fair.

21 **THE COURT:** I think that's what I heard, that they made a
22 reasonable offer. You didn't say anything about your
23 clients, just that ---

24 **MR. HALE:** Just in case my clients want to read the
25 transcript.

25

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1 THE COURT: All right. One moment, please.

2 MR. HALE: Thank you, Your Honor.

3 THE COURT: And again, let me get the facts straight.

4 What was the bid amount, Mr. Hale?

5 MR. HALE: The bid amount was \$3036 -- let me hand you up
6 a memorandum I just clocked in. That will make it
7 easier for you. Down there in the footnote on the
8 very bottom of that page was what we originally
9 calculated off of the mortgage amount. The bid
10 amount is in there as well, as is the market value
11 that Brian asserts the property is worth as is
12 substantiated by the Register of Deeds records.

13 THE COURT: Okay. What was the bid amount, for clarity --

14 -

15 MR. HALE: \$3036, as I recall, Your Honor. That's correct,
16 it's \$3036.

17 THE COURT: And Ms. Trotter, what was the amount that was
18 paid to satisfy the judgment?

19 MS. TROTTER: \$3011.58.

20 THE COURT: So there were surplus funds of a few dollars?

21 MS. TROTTER: Yes, Judge. The association had some
22 additional costs post-judgement, but they're not
23 making a claim for any of those. I think there's a
24 \$45 bid fee or something.

25 THE COURT: The motion for a writ of assistance is denied

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1 at this time. The motion to set aside the sale is
2 going to be taken under advisement. Mr. Boger, if
3 you could submit a proposed order by this time next
4 week, is that too soon?

5 MR. BOGER: No, that's perfect, Your Honor. I've done a lot
6 of work on this.

7 THE COURT: All right. And, Mr. Hale, if you want to
8 submit a proposal order, please do it by this time
9 next week. Ms. Trotter, you as well. No, you're
10 not going to submit one? No, I understand.

11 MS. TROTTER: I don't think my client's all that much in it
12 at this point. I'm sure that Eric Hale will do a
13 great job on his proposed order.

14 THE COURT: Okay. And, Robin, do you know who's
15 representing who, and you've got everything straight
16 on that?

17 THE COURT: Yes, sir. I'm good. Thank you.

18 THE COURT: Okay. All right. And we'll wait to hear from
19 y'all, and I'm going to commit, and y'all may remind
20 me that I'm going to make a ruling fairly quickly
21 after I read your proposed orders. And, meanwhile,
22 keep in mind that y'all can settle this without my
23 input. So if your clients want to keep talking to
24 each other, that's fine. But I'd like to hear from
25 the lawyers by this time next week.

27

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1 MR. HALE: Very good. Thank you, Judge.

2 THE COURT: All right. You're welcome.

3 (There being nothing further, the hearing was concluded at
4 at 12:03 p.m.)

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CERTIFICATE

I certify that the foregoing transcript, consisting of 28 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on February 6, 2015, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



September 24, 2015

ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-28-2021

MASTER'S DEED)
State of South Carolina)
COUNTY OF Richland)

TO ALL WHOM THESE PRESENT SHALL CONCERN:

I, Joseph M. Strickland, as Master in Equity for Richland County, in said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Richland County between **Winrose Homeowners' Association, Inc., as Plaintiff, vs. Devery A. Hale and Tina T. Hale, as Defendant, Case Number 2014-CP-40-0847**, by an Order dated **July 21, 2014**, it was decreed that the property hereinafter described should be sold by the Master in Equity for Richland County on the terms and for the purposes mentioned in the Order(s) granted in the case; and

WHEREAS, I the undersigned, as Master in Equity for Richland County, after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the matter of auction, sell the said property on **August 4, 2014** for the sum of **\$3,036.00** said sum being the highest amount bid at said sale and having been made by **Regime Solutions the hereinbelow named grantee and said grantee having paid the bid.**

NOW, KNOW ALL MEN, That I, the undersigned, as Master in Equity for Richland County, pursuant to the foregoing and also in consideration of the said bid paid as aforesaid by the said hereinbelow named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and by these presents do grant, bargain, and release the following described property unto the grantee,

Grantee's Name : **Regime Solutions**

PO# box 65417 Orange Park fl 32065

See attached property description.

Subject to assessments, Richland County taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

TOGETHER, with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

Book 1968-266
2014061350 08/22/2014 13:52:52:620 Master's Deed-Foreclosure
Fee:\$10.00 County Tax:\$3.85 State Tax:\$9.10



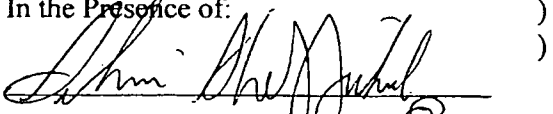
2014061350 John R. Strickland Richland County R.O.D.

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, their successors and assigns for their own use, benefit, and behoof, forever.

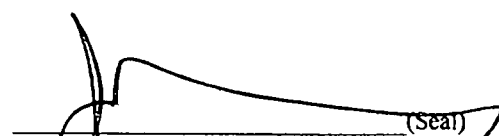
IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Richland County, under and by virtue of the said Order(s), have hereunto set my Hand and Seal the 18th day of August, in the year of our Lord Two Thousand and Fourteen, and in the Two Hundred and Thirty-eighth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED)

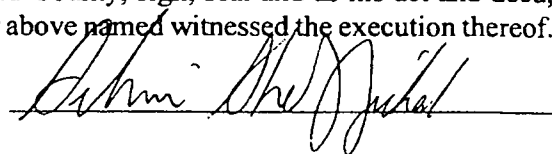
In the Presence of:)




State of South Carolina)
COUNTY OF RICHLAND)


Master in Equity, Richland County (Seal)

PERSONALLY APPEARED the above named witness and made oath that (s)he saw the within named Joseph M. Strickland, as Master for Richland County, sign, seal and as his act and deed, deliver the within Deed; and that (s)he with the other above named witnessed the execution thereof.



SWORN TO AND SUBSCRIBED before me on this 18th day of August, 2014.



NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: August 27, 2023

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 148 on a plat of WINROSE - PHASE TWO prepared by Belter & Associates, Inc. dated September 17, 1997 and recorded in the Office of the RMC for Richland County in Plat Book 57 at page 1055. This property being more particularly shown on plat prepared for Devery A. Hale and Tina T. Hale by Cox and Dinkins, Inc. dated April 16, 1998; said property having such sizes, shapes, dimensions, buttings and boundings as will be shown by reference to the aforesaid plat.

This being the same property to given to Devery A. Hale and Tina T. Hale by deed of Mark S. Kovacs d/b/a Style Homes dated 04/24/1998 and recorded in the Richland County Register of Deeds Office on 05/06/1998 in Book 64 at Page 615.

Property Address: 25 Caddis Creek Court
TMS# R05107-05-12

Contract Price \$ 0 Date of Contract Is the property seller the owner of public record? Yes No Data Source(s) Richland City Tax Re

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? Yes No

If Yes, report the total dollar amount and describe the items to be paid.

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics				One-Unit Housing Trends				One-Unit Housing		Percent Land Use %	
Location	☐ Urban	☒ Suburban	☐ Rural	Property Values	☐ Increasing	☒ Stable	☐ Declining	PRICE	AGE	One-Unit	55 %
Built-Up	☒ Over 75%	☐ 25-75%	☐ Under 25%	Demand/Supply	☐ Shortage	☒ In Balance	☐ Over Supply	\$ (000)	(yrs)	2-4 Unit	10 %
Growth	☐ Rapid	☒ Stable	☐ Slow	Marketing Time	☐ Under 3 mths	☒ 3-6 mths	☐ Over 6 mths	105 Low	0	Multi-Family	5 %
Neighborhood Boundaries NORTH BY HOLLINGSWED RD. EAST BY LOST CREEK								130 High	50	Commercial	10 %
RD. SOUTH BY BROAD RIVER RD. WEST BY I-26								115 Pred.	25	Other	20 %
Neighborhood Description The subject neighborhood is located within reasonable proximity to shopping, houses of worship, schools, employment centers, and recreational facilities. Location is 15 miles north of the Central Business District of the City of Columbia, SC.											

Market Conditions (including support for the above conclusions) I HAVE CONSIDERED RELEVANT COMPETITIVE LISTINGS AND OR CONTRACT OFFERINGS IN THE PERFORMANCE OF THIS APPRAISAL AND THE TRENDING INFORMATION REPORTED IN THIS SECTION. * "OTHER" PERCENT LAND USE IS VACANT LAND.

Dimensions 37.1X150.3X142.9X142.9 Area 12358 sf Shape GEN RECTANG. View N:Res;Res

Specific Zoning Classification RS-1 Residential Zoning Description Single Family Residential

Zoning Compliance ☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)

Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe

SINGLE FAMILY RESIDENTIAL.

Utilities	Public	Other (describe)	Public	Other (describe)	Off-site Improvements—Type Public Private	
Electricity	☒		Water	☒	Street	Asphalt/pub ☒
Gas	☒		Sanitary Sewer	☒	Alley	NONE ☐

FEMA Special Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone X FEMA Map # 4501700040 H FEMA Map Date 07/17/1995

Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe

SITE IS TYPICAL IN SIZE; TOPOGRAPHY IS AVERAGE FOR THE SUBDIVISION; NO ADVERSE EASEMENTS OR ENCROACHMENTS NOTED THAT ADVERSELY AFFECT VALUE OR MARKETABILITY.

Source(s) Used for Physical Characteristics of Property ☒ Appraisal Files ☒ MLS ☒ Assessment and Tax Records ☐ Prior Inspection ☐ Property Owner

☒ Other (describe) Inspection from street (10/31/14) Data Source(s) for Gross Living Area 1561

General Description		General Description		Heating/Cooling		Amenities		Car Storage	
Units	☒ One ☐ One with Accessory Unit	☐ Concrete Slab	☒ Crawl Space	☒ FWA	☐ HWBB	☒ Fireplace(s) # 1	☐ None	☐ None	
# of Stories	1.5	☐ Full Basement	☐ Finished	☐ Radiant		☐ Woodstove(s) # 0	☒ Driveway	# of Cars	2
Type	☒ Det. ☐ Att. ☐ S-Det./End Unit	☐ Partial Basement	☐ Finished	☐ Other		☒ Patio/Deck deck	Driveway Surface	Concrete	
☒ Existing ☐ Proposed ☐ Under Const.		Exterior Walls	Vinyl / Avg	Fuel	ELEC	☒ Porch front	☒ Garage	# of Cars	2
Design (Style)	Traditional	Roof Surface	Composition/avg	☒ Central Air Conditioning		☒ Pool unknown	Carport	# of Cars	0
Year Built	1998	Gutters & Downspouts	none	☐ Individual		☒ Fence wood	☒ Attached	☐ Detached	
Effective Age (Yrs)	6	Window Type	Vinyl/S.H. Avg.	☐ Other		☐ Other none	☐ Built-in		
Appliances	Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☐ Microwave ☐ Washer/Dryer ☒ Other (describe)	vent fan							

Finished area above grade contains: 6 Rooms 3 Bedrooms 2.0 Bath(s) 1,561 Square Feet of Gross Living Area Above Grade

Additional features (special energy efficient items, etc.) Subject meets 1993 Building Efficiency Standards Act guidelines.

Describe the condition of the property and data source(s) (including apparent needed repairs, deterioration, renovations, remodeling, etc.).

C3: BASED ONLY ON AN EXTERIOR INSPECTION THE PHYSICAL CONDITION IS AVERAGE. WITH WHAT IS CONSIDERED NORMAL PHYSICAL AS WELL AS FUNCTIONAL INADEQUACIES FOR A PROPERTY THE AGE AND DESIGN OF THE SUBJECT CONSIDERING QUALITY OF MATERIALS AND WORKMANSHIP IN RELATION TO OTHERS.

Are there any apparent physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☒ Yes ☐ No

If Yes, describe Environmental factors that typically have a negative influence on value were not observed or known. The appraisal does not guarantee that the property is free of defects or environmental problems.

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe

Design & appeal, as well as construction quality, are in keeping with all other properties in the subdivision.

Location	IN: RES: RES	IN: RES: RES	IN: RES: RES	IN: RES: RES
Leasehold/Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Site	12358 sf	8250 sf	08200 sf	09745 sf
View	N:Res:Res	N:Res:Res	N:Res:Res	N:Res:Res
Design (Style)	DT1.5:Traditional	DT1:Traditional	0DT1:Traditional	0DT1:Traditional
Quality of Construction	Q3	Q3	Q3	Q3
Actual Age	16	15	015	019
Condition	C3	C3	C4	+5,500 C4
Above Grade	Total Bdrms. Baths	Total Bdrms. Baths	Total Bdrms. Baths	Total Bdrms. Baths
Room Count	6 3 2.0	6 3 2.0	6 3 2.0	6 3 2.0
Gross Living Area	1,561 sq. ft.	1,307 sq. ft.	+5,080 1,210 sq. ft.	+7,020 1,364 sq. ft.
Basement & Finished	0sf	0sf	0sf	0sf
Rooms Below Grade	0rr0br0.0ba0o	0rr0br0.0ba0o	0rr0br0.0ba0o	0rr0br0.0ba0o
Functional Utility	Average	Average	Average	Average
Heating/Cooling	Fwa/Central	Fwa/Central	Fwa/Central	Fwa/Central
Energy Efficient Items	Ins/Ins Wind	Ins/Ins Wind	Ins/Ins Wind	Ins/Ins Wind
Garage/Carport	2ga2dw	2dw	+5,500 2dw	+5,500 2ga2dw
Porch/Patio/Deck	Porch/Deck	Porch / Patio	+2,000 Porch/Deck	Porches
KITCHEN	ro mw dw ds	ro mw dw ds	ro mw dw ds	ro mw dw ds
LANDSCAPING	Modest/Fence	Modest/Fence	Modest/Fence	Modest/Fence
FIREPLACE	1 fireplace	None	+1,500 1 fireplace	1 fireplace
Net Adjustment (Total)		[X] + [] - s	14,080 [X] + [] - s	18,020 [X] + [] - s
Adjusted Sale Price of Comparables		Net Adj. 12.30 % Gross Adj. 12.30 % s	Net Adj. 16.38 % Gross Adj. 16.38 % s	Net Adj. 10.98 % Gross Adj. 10.98 % s
☒ did not research the sale or transfer history of the subject property and comparable sales. If not, explain Public records and Richland County Assessor's records indicate the last recording of a transfer was 05/06/1998, FOR \$104,250. No sales of the three comps during prior year.				
My research ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.				
Data Source(s) Richland County tax assessors records, CMLS.				
My research ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.				
Data Source(s) Richland County tax assessors records as well as CMLS records.				
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).				
ITEM	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)	CMLS/Rich Cty Tx Rcd	CMLS/Rich Cty Tx Rcd	CMLS/Rich Cty Tx Rcd	CMLS/Rich Cty Tx Rcd
Effective Date of Data Source(s)	10/31/2014	10/31/2014	10/31/2014	10/31/2014
Analysis of prior sale or transfer history of the subject property and comparable sales The analysis of the sales/transfer information for the subject property was obtained from CMLS and Richland County Tax Records, as of 10/31/2014. The analysis of the sales information stated in the grid was limited to CMLS and Richland County Tax Records as of 10/31/2014.				
Summary of Sales Comparison Approach All comparables used are closed sales, located within the same market area as the subject, with similar market conditions. The comps are all considered to be good indicators of value. Appropriate adjustments have been made for all known and/or observed differences and were extracted from the market based on paired sales data. All sales were given equal weight in estimating the market value.				
Indicated Value by Sales Comparison Approach \$128,000				
Indicated Value by: Sales Comparison Approach \$ 128,000 Cost Approach (If developed) \$ Income Approach (If developed) \$				
MARKET APPROACH IS THE BEST INDICATOR OF VALUE, WHICH SHOWS THE TYPICAL BUYER AND SELLER REACTION IN THE MARKETPLACE. THE INCOME APPROACH WAS NOT USED DUE TO THE LACK OF AVAILABLE DATA ON SIMILAR RENTAL PROPERTY.				
This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: NO				
CONDITIONS				
Based on a visual inspection of the exterior areas of the subject property from at least the street, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$128,000, as of 10/31/2014, which is the date of inspection and the effective date of this appraisal.				

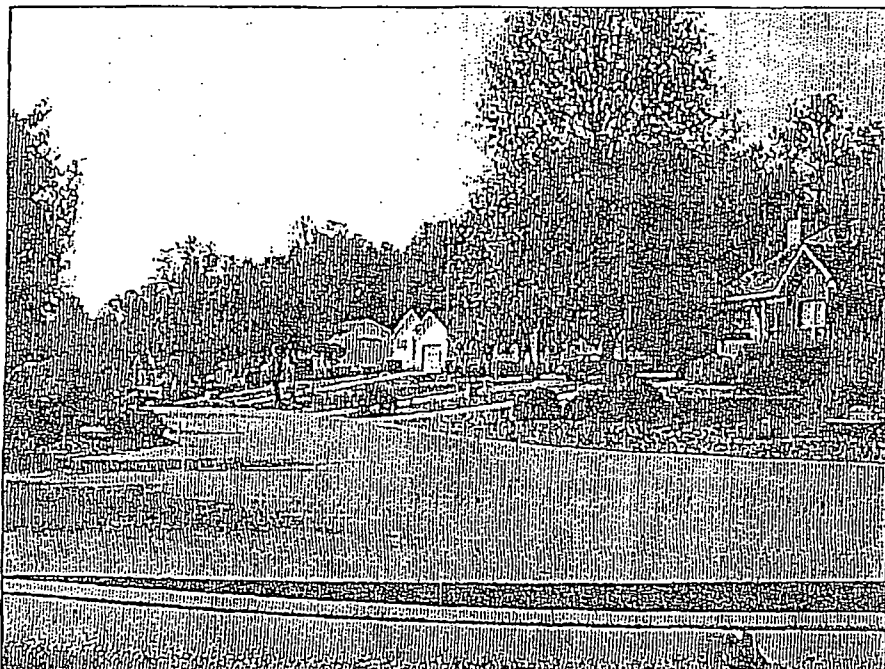
PROVIDING RELEVANT COMPETITIVE LISTING CONTRACT DATA, MARKET TRENDS, UNUSUAL SELLER FINANCING CONCESSIONS/BUYDOWNS THAT IMPACT MARKET. THE LIST TO SALES RATIO IS 97%. TYPICAL DAYS ON MARKET IS 180. THE MARKETING TIME TREND IS STABLE. INTEREST RATES FROM 3.50% TO 7.25%. 30 YEARS FIXED RATE LOANS.	THE APPRAISER HAS NO CURRENT OR PROSPECTIVE INTEREST IN THE SUBJECT PROPERTY OR THE PARTIES INVOLVED. THE APPRAISER HAS NOT PROVIDED ANY SERVICES AS AN APPRAISER OR IN ANY OTHER CAPACITY ON THE SUBJECT PROPERTY WITHIN THE PRIOR THREE YEAR PERIOD IMMEDIATELY PRECEDING ACCEPTANCE OF THIS ASSIGNMENT. THE APPRAISER HAS "NOT" AGREED WITH THE CLIENT TO KEEP ANY PRIOR ASSIGNMENTS CONFIDENTIAL.																																											
	THE TYPICAL EXPOSURE TIME FOR SIMILAR HOMES IN THIS AREA IS (3-6 MONTHS). THE DEFINITION OF EXPOSURE TIME USED WAS TAKEN FROM THE DEFINITIONS SECTION OF THE 2012-2013 VERSION OF USPAP.																																											
	COST APPROACH TO VALUE (not required by Fannie Mae)																																											
	Provide adequate information for the lender/client to replicate the below cost figures and calculations.																																											
	Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) n/a																																											
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;">ESTIMATED</td> <td style="width:15%;">REPRODUCTION OR</td> <td style="width:15%;">REPLACEMENT COST NEW</td> <td style="width:55%;">OPINION OF SITE VALUE.....= \$</td> </tr> <tr> <td colspan="3">Source of cost data</td> <td>Dwelling 1,561 Sq. Ft. @ \$= \$</td> </tr> <tr> <td colspan="3">Quality rating from cost service AVG Effective date of cost data</td> <td>Sq. Ft. @ \$= \$</td> </tr> <tr> <td colspan="3">Comments on Cost Approach (gross living area calculations, depreciation, etc.)</td> <td></td> </tr> <tr> <td colspan="3">DUE TO AGE OF SUBJECT, THE REPLACEMENT COST WAS NOT CONSIDERED A FACTOR IN ESTIMATING MARKET VALUE. THEREFORE, NOT USED. PROPERTY CONFORMS TO APPLICABLE HUD/VA PROPERTY STANDARDS, WITH NO CONDITIONS.</td> <td>Garage/Carport Sq. Ft. @ \$= \$</td> </tr> <tr> <td colspan="3"></td> <td>Total Estimate of Cost-New= \$</td> </tr> <tr> <td colspan="3"></td> <td>Less Physical Functional External Depreciation= \$</td> </tr> <tr> <td colspan="3"></td> <td>Depreciated Cost of Improvements= \$</td> </tr> <tr> <td colspan="3"></td> <td>"As-is" Value of Site Improvements= \$</td> </tr> <tr> <td colspan="3">Estimated Remaining Economic Life (HUD and VA only) 60 Years</td> <td>Indicated Value By Cost Approach= \$</td> </tr> </table>				ESTIMATED	REPRODUCTION OR	REPLACEMENT COST NEW	OPINION OF SITE VALUE.....= \$	Source of cost data			Dwelling 1,561 Sq. Ft. @ \$= \$	Quality rating from cost service AVG Effective date of cost data			Sq. Ft. @ \$= \$	Comments on Cost Approach (gross living area calculations, depreciation, etc.)				DUE TO AGE OF SUBJECT, THE REPLACEMENT COST WAS NOT CONSIDERED A FACTOR IN ESTIMATING MARKET VALUE. THEREFORE, NOT USED. PROPERTY CONFORMS TO APPLICABLE HUD/VA PROPERTY STANDARDS, WITH NO CONDITIONS.			Garage/Carport Sq. Ft. @ \$= \$				Total Estimate of Cost-New= \$				Less Physical Functional External Depreciation= \$				Depreciated Cost of Improvements= \$				"As-is" Value of Site Improvements= \$	Estimated Remaining Economic Life (HUD and VA only) 60 Years			Indicated Value By Cost Approach= \$
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PROJECT INFORMATION FOR PUDs (If applicable)																																												
Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☒ No Unit type(s) ☒ Detached ☐ Attached																																												
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.																																												
Legal name of project																																												
Total number of phases		Total number of units	Total number of units sold																																									
Total number of units rented		Total number of units for sale	Data Source(s)																																									
Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion																																												
Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source(s)																																												
Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.																																												
Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.																																												
Describe common elements and recreational facilities COMMON AREA MAINTENANCE																																												



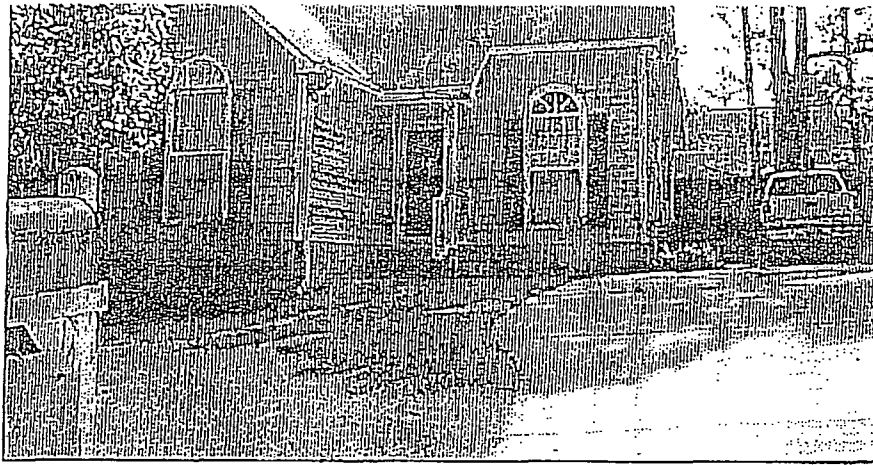
FRONT VIEW OF
SUBJECT PROPERTY



REAR VIEW OF
SUBJECT PROPERTY



STREET SCENE OF
SUBJECT PROPERTY



Price \$114,500
 Price/SF 87.61
 Date s03/14;c02/14
 Age 15
 Room Count 6-3-2.0
 Living Area 1,307

Value Indication \$128,600

COMPARABLE #2

207 CADDIS CREEK ROAD
 Irmo, SC 29063-8139

Price \$110,000
 Price/SF 90.91
 Date s01/14;c11/13
 Age 15
 Room Count 6-3-2.0
 Living Area 1,210

Value Indication \$128,000



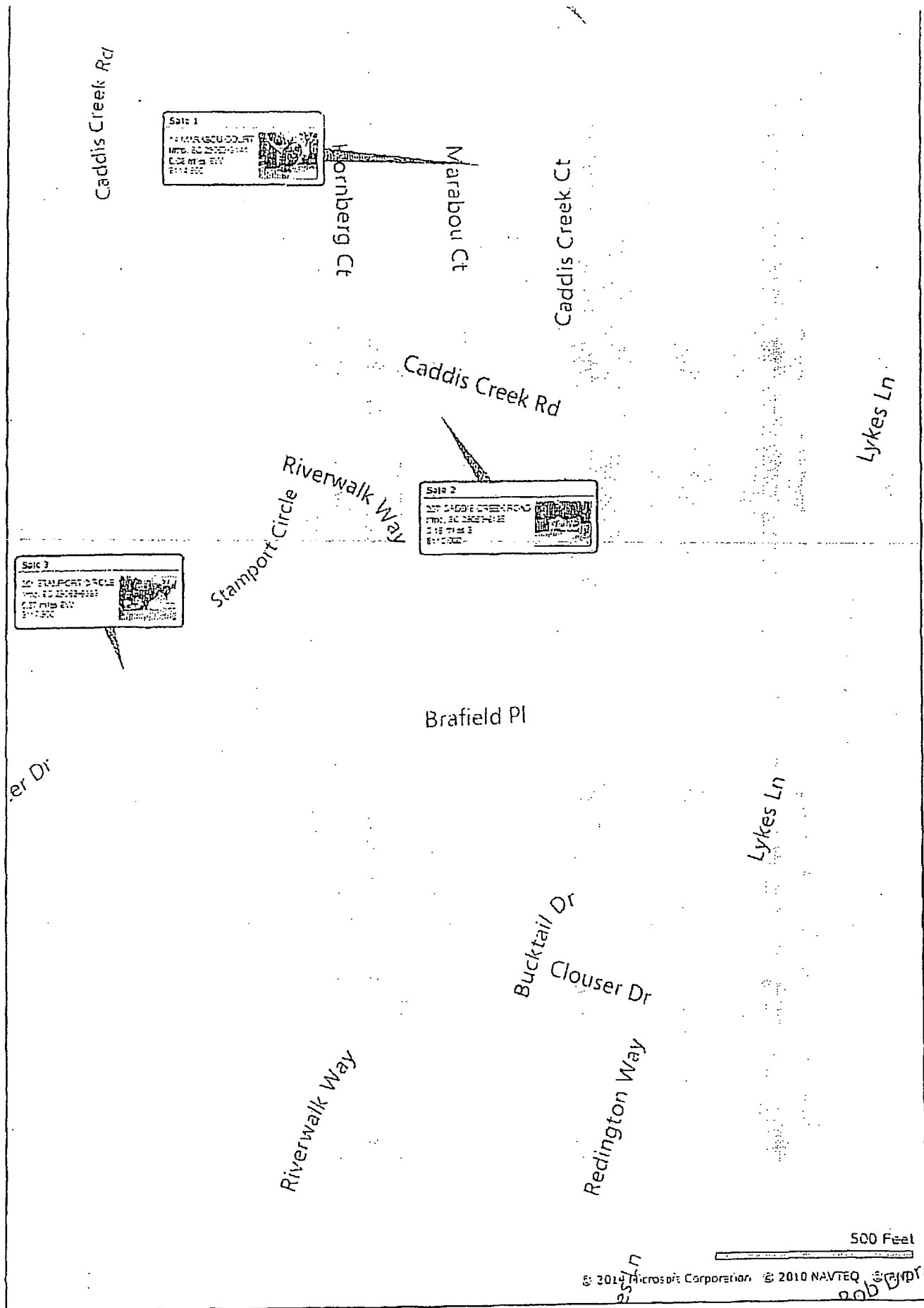
COMPARABLE #3

201 STAMPORT CIRCLE
 Irmo, SC 29063-9393

Price \$117,900
 Price/SF 86.44
 Date s05/14;c05/14
 Age 19
 Room Count 6-3-2.0
 Living Area 1,364

Value Indication \$130,800





new foundation and recycled materials and the recycled components have been remanufactured-manufactured and are new common. Recently constructed improvements that have not been previously occupied are not considered "new" if they have significant physical depreciation (i.e., newly constructed dwellings that have been vacant for an extended period of time without adequate maintenance or upkeep).

C2 - The improvements feature no deferred maintenance, little or no physical depreciation, and require no repairs. Virtually all building components are new or have been recently repaired, refinished, or rehabilitated. All outdated components and finished have been updated and/or replaced with components that meet current standards. Dwellings in this category either are almost new or have been recently completely renovated and are similar in condition to new construction.

Note: The improvements represent a relatively new property that is well maintained with no deferred maintenance and little or no physical depreciation, or an older property that has been recently completely renovated.

C3 - The improvements are well maintained and feature limited physical depreciation due to normal wear and tear. Some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well maintained.

Note: The improvement is in its first-cycle of replacing short-lived building components (appliances, floor coverings, HVAC, etc.) and is being well maintained. Its estimated effective age is less than its actual age. It also may reflect a property in which the majority of short-lived building components have been replaced but not to the level of a complete renovation.

C4 - The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate.

Note: The estimated effective age may be close to or equal to its actual age. It reflects a property in which some of the short-lived building components have been replaced, and some short-lived building components are at or near the end of their physical life expectancy; however, they still function adequately. Most minor repairs have been addressed on an ongoing basis resulting in an adequately maintained property.

C5 - The improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability is somewhat diminished due to condition, but the dwelling remains useable and functional as a residence.

Note: Some significant repairs are needed to the improvements due to the lack of adequate maintenance. It reflects a property in which many of its short-lived building components are at the end of or have exceeded their physical life expectancy but remain functional.

C6 - The improvements have substantial damage or deferred maintenance with deficiencies or defects that are severe enough to affect the safety, soundness, or structural integrity of the improvements. The improvements are in need of substantial repairs and rehabilitation, including many or most major components.

Note: Substantial repairs are needed to the improvements due to the lack of adequate maintenance or property damage. It reflects a property with conditions severe enough to affect the safety, soundness, or structural integrity of the improvements.

Quality Ratings and Definitions

Q1 - Dwellings with this quality rating are usually unique structures that are individually designed by an architect for a specified use. Such residences typically are constructed from detailed architectural plans and specifications and feature an exceptionally high level of workmanship and exceptionally high-grade materials throughout the interior and exterior of the structure. The design features exceptionally high-quality exterior refinements and ornamentation, and exceptionally high-quality interior refinements. The workmanship, materials, and finishes throughout the dwelling are exceptionally high quality.

Q2 - Dwellings with this quality rating are often custom designed for construction on an individual property owner's site. However, dwellings in this quality grade are also found in high-quality tract developments featuring residences constructed from individual plans or from highly modified or upgraded plans. The design features detailed high-quality exterior ornamentation, high-quality interior refinements, and detail. The workmanship, materials, and finishes throughout the dwelling are of exceptionally high quality.

Q3 - Dwellings with this quality rating are residences of higher quality built from individual or readily available designer plans in above-standard residential tract developments or on an individual property owner's site. The design includes significant exterior ornamentation and interiors that are well finished. The workmanship exceeds acceptable standards and many materials and finishes throughout the dwelling have been upgraded from "stock" standards.

Q4 - Dwellings with this quality rating meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized and the design includes adequate fenestration and some exterior ornamentation and interior refinements. Materials, workmanship, finish, and equipment are of stock or builder grade and may feature some upgrades.

Q5 - Dwellings with this quality rating feature economy of construction and basic functionality as main considerations. Such dwellings feature a plain design using readily available or basic floor plans featuring minimal fenestration and basic finishes with minimal exterior ornamentation and limited interior detail. These dwellings meet minimum building codes and are constructed with inexpensive, stock materials with limited refinements and upgrades.

Q6 - Dwellings with this quality rating are of basic quality and lower cost; some may not be suitable for year-round occupancy. Such dwellings are often built with simple plans or without plans, often utilizing the lowest quality building materials. Such dwellings are often built or expanded by persons who are professionally unskilled or possess only minimal construction skills. Electrical, plumbing, and other mechanical systems and equipment may be minimal or non-existent. Older dwellings may feature one or more substandard non-conforming additions to the original structure.

Definitions of Not Updated, Updated, and Remodeled

Not Updated - Little or no updating or modernization. This description includes, but is not limited to, new homes. Residential properties of fifteen years of age or less often reflect an original condition with no updating. If no major components have been replaced or updated. Those over fifteen years of age are also considered not updated if the appliances, fixtures, and finishes are predominantly dated. An area that is "Not Updated" may still be well maintained and fully functional, and this rating does not necessarily imply deferred maintenance or physical/functional deterioration.

Updated - The area of the home has been modified to meet current market expectations. These modifications are limited in terms of both scope and cost. An updated area of the home should have an improved look and feel, or functional utility. Changes that constitute updates include refurbishment and/or replacing components to meet existing market expectations. Updates do not include significant alterations to the existing structure.

Remodeled - Significant finish and/or structural changes have been made that increase utility and appeal through complete replacement and/or expansion. A remodeled area reflects fundamental changes that include multiple alterations. These alterations may include some or all of the following: replacement of a major component (cabinet(s), bathtub, or bathroom tile), relocation of plumbing/gas fixtures/appliances, significant structural alterations (relocating walls and/or the addition of square footage). This would include a complete gutting and rebuild.

Explanation of Bathroom Count

Three-quarter baths are counted as a full bath in all cases. Quarter baths (baths that feature only a toilet) are not included in the bathroom count. The number of full and half baths is reported by separating the two values using a period, where the full bath count is represented to the left of the period and the half bath count is represented to the right of the period.

Example: 3.2 indicates three full baths and two half baths

Cash	Cash	
Comm	Commercial Influence	Location
Conv	Conventional	Sale or Financing Concessions
cp	Carport	Garage/Carport
CrtOrd	Court Ordered Sale	Sale or Financing Concession
CitySky	City View Skyline View	View
CityStr	City Street View	View
cv	Covered	Garage/Carport
DOM	Days On Market	Data Sources
DT	Detached Structure	Design (style)
dw	Driveway	Garage/Carport
e	Expiration Date	Date of Sale/Time
Estate	Estate Sale	Sale or Financing Concessions
FHA	Federal Housing Administration	Sale or Financing Concessions
G	Garage	Garage/Carport
ga	Attached Garage	Garage/Carport
gbi	Built-In Garage	Garage/Carport
gd	Detached Garage	Garage/Carport
GlCse	Golf Course	Location
Glwv	Golf Course View	View
GR	Garden	Design (Style)
HR	High Rise	Design (Style)
In	Interior Only Stairs	Basement & Finished Rooms Below Grade
Ind	Industrial	Location & View
Listing	Listing	Sale or Financing Concessions
Lndfl	Landfill	Location
LidSght	Limited Sight	View
MR	Mid Rise	Design (Style)
Mtn	Mountain View	View
N	Neutral	Location & View
NonArm	Non-Arms Length Sale	Sale or Financing Concessions
o	Other	Basement & Finished Rooms Below Grade
O	Other	Design (Style)
op	Open	Garage/Carport
Prk	Park View	View
Pstl	Pastoral View	View
PubTrn	Public Transportation	Location
PwrLn	Power Lines	View
Relo	Relocation Sale	Sale or Financing Concessions
REO	REO Sale	Sale or Financing Concessions
Res	Residential	Location & View
RH	USDA - Rural Housing	Sale or Financing Concessions
rr	Recreational (Rec) Room	Basement & Finished Rooms Below Grade
s	Settlement Date	Date of Sale/Time
sf	Square Feet	Area, Silo, Basement
Short	Short Sale	Sale or Financing Concessions
Unk	Unknown	Date of Sale/Time
VA	Veterans Administration	Sale or Financing Concessions
w	Withdraw Date	Date of Sale/Time
wb	Walk Out Basement	Basement & Finished Rooms Below Grade
Woods	Woods View	View
Wtr	Water View	View
WtrFr	Water Frontage	Location
wu	Walk Up Basement	Basement & Finished Rooms Below Grade

[illegible]

reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a visual inspection of the exterior areas of the subject property from at least the street, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

The appraiser must be able to obtain adequate information about the physical characteristics (including, but not limited to, condition, room count, gross living area, etc.) of the subject property from the exterior-only inspection and reliable public and/or private sources to perform this appraisal. The appraiser should use the same type of data sources that he or she uses for comparable sales such as, but not limited to, multiple listing services, tax and assessment records, prior inspections, appraisal files, information provided by the property owner, etc.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
4. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
5. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

4. I developed my opinion of the market value of the real property that is the subject of this report using the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.

5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.

6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.

7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.

8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.

9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.

10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.

11. I have knowledge and experience in appraising this type of property in this market area.

12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.

13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.

14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.

15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.

16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.

17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.

18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).

19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.

4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature [Signature]
Name JAMES T. WHEAT
Company Name SC APPRAISAL SERVICE LLC
Company Address PO BOX 210545
COLUMBIA, SC 29221-0545
Telephone Number 803-798-8621
Email Address scappraisalservice@sc.rr.com
Date of Signature and Report 11/03/2014
Effective Date of Appraisal 10/31/2014
State Certification # CR 467
or State License # _____
or Other (describe) _____ State # _____
State SC
Expiration Date of Certification or License 06/30/2016
ADDRESS OF PROPERTY APPRAISED
25 Caddis Creek Court
Irmo, SC 29063-8140

APPRAISED VALUE OF SUBJECT PROPERTY \$ 128,000

LENDER/CLIENT

Name No AMC
Company Name Brian Boger
Company Address 1331 Elmwood Ave
Columbia, SC 29201
Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

☐ Did not inspect exterior of subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____

COMPARABLE SALES

☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

BCD-1819-1

State of South Carolina
Department of Labor, Licensing and Regulation
Real Estate Appraisers Board

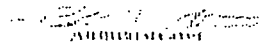
JAMES T. WHEAT

Is hereby entitled to practice as a

Certified Residential Appraiser

License Number: 467

Expiration Date: 06/30/2016
NOTARY PUBLIC


ADMINISTRATOR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Hon. Joseph M. Strickland, Master-in-Equity

Case No. 2015-001807

Winrose Homeowners' Association, Inc. and Regime Solutions, LLC..... Respondents,

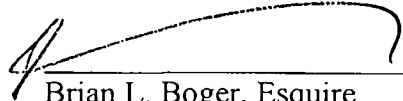
v.

Devery A. Hale and Tina T. Hale..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 25, 2015



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Phillip A. Curiale, Esquire
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Attorneys for Appellants